

No. 10380

United States *Vol 2334*
Circuit Court of Appeals
For the Ninth Circuit.

CARSON AND TAHOE LUMBER AND FLUM-
ING CO., a corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.


Transcript of the Record

Upon Petition to Review a Decision of the Tax Court
of the United States

FILED

JUL - 1 1943

PAUL P. O'BRIEN,
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

A. W. Helvern, Esq.,
Llewellyn A. Luce, Esq.,
George H. Koster, Esq.

For Comm'r.:

Arthur Murray, Esq.

Docket No. 103735

CARSON AND TAHOE LUMBER AND FLUM-
ING COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1940

- Jul. 8—Petition received and filed. Taxpayer notified. Fee paid.
- " 8—Copy of petition served on General Counsel.
- Aug. 19—Answer filed by General Counsel.
- " 19—Request for hearing in San Francisco, Calif. filed by General Counsel.
- " 28—Notice issued placing proceeding on San Francisco calendar.
- Answer and request served.

1941

- Mar. 13—Motion for leave to file amended answer, amended answer lodged, filed by General Counsel.
- " 17—Motion granted.
- Apr. 8—Hearing set June 16, 1941 at San Francisco, Calif.
- " 14—Reply to amended answer filed by taxpayer. 4/14/41 copy served.
- Jun. 3—Application for subpoena to Mr. Fred Allerman and Allen McFaul filed by General Counsel. 6/3/41 subpoenas (2) issued.
- " 3—Application for subpoena duces tecum to H. R. Jepsen, Wm. D. Park, Richard Kirman, Sr. and J. B. Howell filed by General Counsel. 6/3/41 subpoenas (4) issued.
- " 25-26—Hearing had before Mr. Kern on the merits. Submitted. Respondent granted 10 days to amend. Briefs due August 20, 1941—replies September 19, 1941.
- Jul. 8—Transcript of hearing of 6/25/41 filed.
- " 8—Transcript of hearing of 6/26/41 filed.
- Aug. 19—Brief filed by taxpayer.
- " 20—Brief filed by General Counsel.
- " 21—Copy of brief served on General Counsel.
- " 28—Motion for permission to substitute the attached page 33 of respondent's brief filed by General Counsel. 9/3/41 granted.

1941

Sep. 16—Reply brief filed by taxpayer. 9/16/41
copy served.

" 18—Reply brief filed by General Counsel.

1942

Jun. 23—Memorandum findings of fact and opinion rendered, Kern, #16.

Decision will be entered under Rule 50.
6/23/42 copy served.

Jul. 29—Computation of deficiency filed by General Counsel.

Aug. 1—Hearing set Sept. 2, 1942 on settlement.

" 31—Consent to settlement filed by taxpayer.

Sep. 1—Decision entered, Kern, Div. 16.

Nov. 24—Motion to fix amount of appeal bond in the sum of \$21,500.00 filed by taxpayer.
11/25/42 granted. [1*]

" 24—Notice of appearance of Llewellyn A. Luce as counsel filed.

" 24—Notice of appearance of George H. Koster as counsel filed.

" 25—Supersedeas bond in the amount of \$21,500.00 approved and ordered filed.

" 27—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by taxpayer.

" 27—Notice of filing petition for review filed by taxpayer with proof of service thereon.

*Page numbering appearing at top of page of original certified Transcript of Record.

1943

- Jan. 6—Certified copy of order from the 9th Circuit extending the time to March 7, 1943 to complete and transmit the record filed.
- Feb. 20—Certified copy of order from the 9th Circuit directing transmission of original exhibits; that said exhibits remain in the custody of the Clerk of The Tax Court of the United States until 15 days before this cause on review is set for argument in this Court; that upon direction and cost of counsel for petitioner on review said exhibits be transmitted to the Clerk of this court filed.
- " 24—Praecipe for record filed by taxpayer with proof of service thereon. No counter praecipe will be filed. [2]

United States Board of Tax Appeals

Docket No. 103735

CARSON AND TAHOE LUMBER AND FLUM-
ING COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REDETERMINATION OF
DEFICIENCY

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, (IRA:90-DGK) dated April 11, 1940, and as a basis for its proceeding alleges as follows:

1. The petitioner is a corporation organized and existing under provision of the laws of Nevada, with its place of business at Carson City, Ormsby County, Nevada.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on April 11, 1940, as the petitioner believes.

3. The taxes in controversy are income taxes for the calendar year 1938, in the amount of \$6,-138.55. The deficiency disclosed by the notice of deficiency is in the amount of \$4,844.10. [3]

4. The determination of the tax, as set forth in the said notice of deficiency, is based upon the following errors:

The Commissioner erred in determining that the fair market value at March 1, 1913 of certain of the petitioner's lands sold during the taxable year was \$169,940.40.

5. The facts upon which the petitioner relies as the basis for this proceeding are as follows:

The petitioner was organized as a corporation under the laws of Nevada, November 24, 1873, and received in exchange for the issuance of its shares of capital stock certain lands in Nevada and California. Certain of the said lands were forested by standing merchantable timber, and lumbering operations with respect to such lands were undertaken and carried on by the corporation up to about the year 1896, at which time practically all available merchantable timber had been removed and lumbering operations were discontinued.

The costs of the said lands to the company's stockholders prior to its incorporation and the fair market value of the lands at the time paid into the company in 1873 are not available in the records of the petitioner.

As at March 1, 1913 petitioner was the owner of approximately 44,400 acres of the said land located principally in Nevada and in the vicinity of Lake Tahoe and [4] *and* having a shore frontage upon the said lake of approximately 75,800 feet.

On or about April 11, 1912 the petitioner entered into an agreement with its president, W. S. Bliss, whereunder the president agreed to undertake the sale of any and all of the various parcels of land for a consideration or commission of ten percent

of a selling price based upon the estimated fair value of the lands.

The president, W. S. Bliss, had prepared a detailed appraisement schedule describing and valuing the various parcels of land by block numbers. In arriving at the values, among other things the president gave consideration to foot frontage of the land upon the shores of Lake Tahoe.

On April 11, 1912 petitioner also entered into an option agreement with J. B. Webster, L. B. Edwards and C. M. Wooster, second parties, covering the sale of the lands owned by the company in the aggregate amount of 44,403 acres, the selling price being based upon the said estimate and appraisement of the various parcels of land as made by W. S. Bliss. The said option and agreement called for an expenditure within one year by the second parties of at least \$10,000 for advertising, exploiting and selling the property, and the cash purchase by the second parties of at least 10 percent of the land. None of the lands were so purchased by the second parties during the first year of the agreement, and thereby they forfeited their rights under the option. [5] The second parties again applied in 1913 for a renewal of the said option agreement, but it was refused by the petitioner.

During the years from 1910 to 1913 inclusive, certain sales of the lands were made by petitioner, and other sales were made by other owners of lands adjacent to and comparable in value with petitioner's lands. The amounts realized by the

sellers as the sale price of the said lands so sold represented an increase of 24.24 percent over the fair value placed upon the said lands by W. S. Bliss in his estimate and appraisement of April 11, 1912.

During the taxable year 1938 with respect to which this controversy arises, petitioner sold to George Whittell certain of its said lands of a total acreage of approximately 11,400 acres, and with respect to which the value, based on the said estimate of W. S. Bliss, was \$155,014. Certain improvements upon the land so conveyed, together with certain personal property also sold, cost the petitioner \$30,428.25, which added to the estimated fair market value of the land of \$155,014, amounted to \$185,442.25.

Petitioner received from the purchaser \$300,433.27 as the sale price of the said property, and using the said \$185,442.25 as a basis for tax purposes, reported in its income tax return a capital gain thereon of \$114,991.02 (\$300,433.27 minus \$185,442.25).

Upon examination of petitioner's return by a [6] Government Internal Revenue Agent, the said value of \$155,014 (claimed by petitioner as March 1, 1913 value) was reduced by \$15,501.85 to \$139,512.15, thus increasing the capital gain reported in petitioner's return by the amount of \$15,501.85. The said value as reduced by the Revenue Agent has been used by the respondent in the notice of deficiency, and the deficiency claimed, to the extent of \$2,557.80, arises by reason of the said deduction and disallowance.

Certain other lands were also sold during the taxable year by the petitioner to the United States Government at a loss of \$13,841, based on estimated March 1, 1913 value. Loss or gain upon the basis of cost with respect to this sale cannot be definitely determined, and the loss of \$13,841, based on March 1, 1913 value, was held by the respondent not to be allowable under Section 113(a) and Section 113(b) of the Revenue Act of 1938. There is no issue herein with respect to such disallowance.

The issue in this case arises by reason of the fact that the respondent, by his said disallowance of \$15,501.85, of March 1, 1913 value claimed in petitioner's return, has taken the position that the estimated fair value of the lands sold to George Whittell, as determined by petitioner's president, W. S. Bliss, and used as being March 1, 1913 value, should be reduced by ten percent.

Petitioner herein contends that not only is the respondent in error in reducing by ten percent the basis [7] claimed in the return but that petitioner is entitled to increase its basis to 124 percent of the values estimated by W. S. Bliss, based upon sale prices actually realized for petitioner's land and similar adjacent lands during the years 1910 to 1913 inclusive. The use of this basis has the effect of reducing the tax liability by \$6,138.55, and if sustained will entitle the petitioner to refund of \$1,254.45.

6. The petitioner prays for relief from the deficiency asserted by the respondent in each of the following particulars:

(a) The petitioner prays the Board to find that it is entitled to a March 1, 1913 value for the land sold to George Whittell in the amount of at least \$192,217.36.

(b) The petitioner prays the Board to find that the petitioner is entitled to refund of taxes overpaid in the amount of \$1,254.45.

(c) The petitioner prays for such other and further relief as to the Board may seem equitable and proper. [8]

Wherefore, petitioner prays that the Board may hear this proceeding and make a determination of the issue.

A. W. HELVERN

Counsel for Petitioner

485 California Street

San Francisco, California

State of California

City & County of San Francisco

Duncan A. McLeod, being duly sworn, says that he is the President of Carson and Tahoe Lumber and Fluming Company, the petitioner named herein, that he has read the foregoing petition and is familiar with the statements contained therein, and that the facts stated are true.

DUNCAN A. McLEOD

Subscribed and sworn to before me this 29th day of June 1940.

FLORA HALL

Notary Public [9]

EXHIBIT A

(Copy)

SN-IT-1

Treasury Department
Internal Revenue Service
433 Federal Office Building
San Francisco, California

Office of
Internal Revenue
Agent in Charge
San Francisco Division
IRA :90-D GK

April 11, 1940

Carson & Tahoe Lumber & Fluming Co.,
Carson City, Nevada

Gentlemen:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1938 discloses a deficiency of \$4,-844.10 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and for-

ward it to the Internal Revenue Agent in Charge, San Francisco, California for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner

By (signed)

F. M. Harless

Internal Revenue Agent in
Charge

Enclosures:

Statement

Form of waiver [10]

STATEMENT

San Francisco

IRA :90-D

GK

Carson & Tahoe Lumber & Fluming Co.,
Carson City, Nevada

Tax Liability for the Taxable Year Ended December 31, 1938

	Liability	Assessed	Deficiency
Income Tax	\$14,696.71	\$ 9,852.61	\$ 4,844.10

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated December 22, 1939, to which no protest has been received.

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return.....		\$ 59,712.78
Unallowable deductions and additional income		
(a) Additional capital gain.....	\$ 29,342.85	
(b) Additional interest income.....	15.37	29,358.22
		<hr/>
Net income adjusted		\$ 89,071.00
		<hr/> <hr/>

EXPLANATION OF ADJUSTMENTS

(a) You reported in your return a net gain of \$101,150.02 from sales of land. This amount included a gain of \$114,991.02 on sales to George Whittell and a loss of \$13,841.00 on sales to the United States Forest Service.

The taxable net gain on these transactions is recomputed below at \$130,492.87, or \$29,342.85 in excess of the amount reported. This difference is caused by the correction of errors in your computation of the cost or other basis of the properties sold in 1938.

The adjusted cost or other basis of the properties sold to George Whittell is held to be \$169,940.40, while you reported a basis of \$185,442.25. [11]

No gain or loss is recognized on the sale of land to the United States Forest Service, from which you reported a loss of \$13,841.00. The March 1, 1913 value of this land, as adjusted, is held to be \$18,504.00. As this value exceeds the sales price of \$6,720.00 no taxable gain is realized under the provisions of section 113(a) (14) of the Revenue Act of 1938. The cost of the land is held to have

been recovered fully in earlier years by allowances for depletion. Consequently, no loss is sustained under the provisions of sections 113(a) and 113(b) of the Revenue Act of 1938.

Description	Sales Price	Adjusted cost or other basis	Gain
Land: Block 4.....		\$ 5,119.20	
5.....		9,225.00	
6.....		11,770.65	
7.....		16,985.70	
8.....		14,736.60	
9.....		8,685.00	
10.....		52,614.00	
11.....		20,376.00	
Camp ground im- provements		28,475.23	
Merchandise		1,519.75	
Unexpired insurance		433.27	
Total, sold to George Whittell	\$300,433.27	\$169,940.40	\$130,492.87

(b) You failed to report in your return interest in the amount of \$15.37 received during the year on a refund of income taxes. This amount is held to constitute taxable income. [12]

COMPUTATION OF EXCESS-PROFITS TAX

Value of capital stock as declared in the capital stock tax return for the year ended June 30, 1938	\$1,000,000.00
Net income for excess-profits tax computation.....	89,071.00
Less:	
10% of capital stock declared value.....	100,000.00
Net income subject to excess-profits tax.....	\$ None

COMPUTATION OF INCOME TAX

Net income for excess-profits tax computation.....	\$ 89,071.00
Less:	
Excess-profits tax	None
Net income	89,071.00
Less:	
Interest on obligations of the United States, etc.	None
Adjusted net income	\$ 89,071.00
Tentative tax at 19 percent.....	\$ 16,923.49
Less:	
2½ per cent of the dividends paid credit, (not to exceed 2½% of adjusted net income).....	2,226.78
Total income tax assessable.....	\$ 14,696.71
Income tax assessed:	
Original, account No. 40101, District of Nevada	9,852.61
Deficiency of income tax.....	\$ 4,844.10

[Endorsed]: U.S.B.T.A. Filed July 8, 1940.

[13]

[Title of Board and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits that the taxes in controversy are income taxes for the calendar year 1938 and that the deficiency disclosed by the notice of deficiency is in the amount of \$4,844.10; denies all other allegations contained in paragraph 3 of the petition.

4. Denies that the determination of the tax as set forth in the said notice of deficiency is based upon errors as alleged in paragraph 4 of the petition. [14]

5. Admits that the petitioner was organized as a corporation under the laws of Nevada; that during the taxable year 1938 petitioner sold certain of its lands for \$300,433.27; that the petitioner, using \$185,442.25 as a basis for said lands, reported a capital gain of \$114,991.02 from said sale on its 1938 income tax return; that upon an examination of petitioner's 1938 return by a Government Internal Revenue agent, said basis was reduced by \$15,501.85, and the capital gain reported by the petitioner increased in a like amount; that the issue in this case arises by reason of the said adjustments; for lack of information, and for other reasons, denies all other allegations contained in paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's

determination be approved and the petitioner's appeal denied.

(Signed) J. P. WENCHEL,

TMM

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

Alva C. Baird,

T. M. Mather,

Arthur L. Murray,

Special Attorneys,

Bureau of Internal Revenue.

ALM/ge 8-9-40

[Endorsed]: U.S.B.T.A. Filed Aug. 19, 1940.

[15]

[Title of Board and Cause.]

AMENDED ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for amended answer to the petition filed by the above-named petitioner, admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph 1 of the petition.
2. Admits the allegations contained in paragraph 2 of the petition.
3. Admits that the deficiency disclosed by the notice of deficiency is in the amount of \$4,844.10,

but denies all other allegations contained in paragraph 3 of the petition. Alleges that the tax here in controversy is income tax for the calendar year 1938, in the amount of \$17,963.61. [16]

4. Admits that the Commissioner erred in determining that the fair market value at March 1, 1913 of certain of petitioner's lands together with certain improvements and personal property, which were sold to George Whittell during the taxable year, was \$169,940.40 and alleges (1) that the Commissioner erred in not determining that the fair market value of said lands as of March 1, 1913, plus the said improvements and personal property, was \$90,428.25, and (2) that the Commissioner erred in not determining that the 1938 taxable net income of the petitioner was \$168,583.15, instead of \$89,071.00, the amount shown in the deficiency notice.

5. Admits that the petitioner was organized as a corporation under the laws of Nevada, November 24, 1873, and received, in exchange for the issuance of its shares of capital stock, certain lands in Nevada and California; that certain of the said lands were forested by standing merchantable timber; that lumber operations with respect to such lands were undertaken and carried on by the corporation up to about the year 1896, at which time practically all available merchantable timber had been removed and lumbering operations were discontinued; that the costs of the said lands to the company's stockholders prior to its incorporation in 1873 are not available in the records of the petitioner; that on or about March 1, 1913, the petitioner was the owner

of approximately 44,400 acres of the said land located principally in Nevada and in the vicinity of Lake Tahoe and having a shore frontage upon the said lake of approximately 75,800 feet; that during the taxable year 1938, with respect to which this controversy arises, [17] petitioner sold to George Whittell certain of its lands and certain improvements upon the land, together with certain personal property; that said improvements and personal property had a 1938 adjusted cost basis of \$30,428.25 to the petitioner; that petitioner received from the said purchaser \$300,433.27 as the sale price of the said property and reported in its income tax return a capital gain thereon of \$114,991.02; that upon an examination of petitioner's return by a Government Internal Revenue Agent the value of the said lands, exclusive of improvements, claimed by the petitioner as the March 1, 1913, value thereof, or \$155,014.00, was reduced to \$139,512.15 thus increasing the capital gain from said sale, as reported in petitioner's return for 1938, in the sum of \$15,501.85; that certain other lands were sold by the petitioner during the taxable year to the United States Government but that there is no issue herein with respect thereto; denies all other allegations contained in paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

7. Further answering, and by way of setting forth allegations to support his claim for 1938 in-

creased deficiencies in income tax, the respondent alleges as follows: [18]

(a) During 1938 the petitioner sold to George Whittell a certain tract of land located in Douglas County, Nevada, together with certain improvements thereon and certain personal property, for a total price of \$300,433.27. Said tract of land, which consists of approximately 11,200 acres, was owned by the petitioner since long prior to 1913, and is described as follows:

DOUGLAS COUNTY, NEVADA

Township 13 North, Range 18 East, M. D. B. & M.

- Section 1: All
- Section 2: $S\frac{1}{2}$ of Lot 1 of $NW\frac{1}{4}$; $SW\frac{1}{4}$; $SE\frac{1}{4}$; Lots 1 & 2 of $NE\frac{1}{4}$
- Section 3: Lots 5, 6 and 7 of $SW\frac{1}{4}$; $SE\frac{1}{4}$; $NE\frac{1}{4}$ of $SW\frac{1}{4}$
- Section 10: Lots 1 and 2; $NE\frac{1}{4}$; $N\frac{1}{2}$ of $SE\frac{1}{4}$
- Section 11: All
- Section 12: All
- Section 13: All
- Section 14: $N\frac{1}{2}$; $SW\frac{1}{4}$; $N\frac{1}{2}$ of $SE\frac{1}{4}$; $SW\frac{1}{4}$ of $SE\frac{1}{4}$
- Section 21: Lot 1
- Section 22: Lots 1 and 2 of $NW\frac{1}{4}$
- Section 23: $NE\frac{1}{4}$ of $NW\frac{1}{4}$; $W\frac{1}{2}$ of $NE\frac{1}{4}$; $NW\frac{1}{4}$ of $SE\frac{1}{4}$
- Section 24: $N\frac{1}{2}$ of $NE\frac{1}{4}$; $NW\frac{1}{4}$; $NW\frac{1}{4}$ of $SW\frac{1}{4}$

Township 14 North, Range 18 East, M. D. B. & M.

- Section 22: Lots 2, 3 and 4; $E\frac{1}{2}$ of $SE\frac{1}{4}$
- Section 23: $N\frac{1}{2}$; $SW\frac{1}{4}$ of $SW\frac{1}{4}$; $E\frac{1}{2}$ of $SW\frac{1}{4}$; $SE\frac{1}{4}$
- Section 24: All
- Section 25: All
- Section 26: All
- Section 27: South 100 ft. of Lot 2 & South 100 ft. of $S\frac{1}{2}$ of $NE\frac{1}{4}$; Lot 3 of $SW\frac{1}{4}$
- Section 35: $E\frac{1}{2}$; $NE\frac{1}{4}$ of $NW\frac{1}{4}$
- Section 36: $N\frac{1}{2}$; $SW\frac{1}{4}$; $W\frac{1}{2}$ of $SE\frac{1}{4}$

Township 14 North, Range 19 East, M. D. B. & M.

Section 7: All

Section 8: All

Section 9: $W\frac{1}{2}$ of $W\frac{1}{2}$

Section 18: All

Section 19: $N\frac{1}{2}$; $W\frac{1}{2}$ of $SW\frac{1}{4}$

Section 20: $W\frac{1}{2}$ of $NW\frac{1}{4}$

Section 30: Lot 2 of $NW\frac{1}{4}$; Lot 2 of $SW\frac{1}{4}$

Section 31: Lot 2 of $NW\frac{1}{4}$; $S\frac{1}{2}$ of Lot 1 of $NW\frac{1}{4}$

[19]

On its Federal income tax return for 1938 the petitioner claimed that the fair market value of said tract of land, as of March 1, 1913, exclusive of improvements, was \$155,014.00.

(b) In determining the deficiency shown in the deficiency notice the respondent erroneously determined that the fair market value of said land as of March 1, 1913, exclusive of improvements, was \$139,512.15, whereas in truth and in fact the fair market value of said land as of March 1, 1913, exclusive of improvements, was not in excess of \$60,000.00.

(c) Upon the sale of said land and other property to George Whittell in 1938, for \$300,433.27, the land, exclusive of improvements, having a fair market value as of March 1, 1913, of \$60,000.00, the petitioner realized a taxable 1938 gain on said transaction in the amount of \$210,005.02, instead of \$130,492.87 as shown in the deficiency notice, which fact shows that the petitioner actually realized taxable 1938 net income in the amount of \$168,583.15, instead of \$89,071.00 as shown in the deficiency notice.

(d) In the notice of deficiency the respondent

understated the 1938 income tax liability of petitioner by the amount of \$13,119.15. Respondent hereby asserts claim for said amount of increased deficiency in income tax alleged to be due, or any part thereof determined by this Board to be due.

Wherefore, it is prayed that petitioner's appeal be denied and that the Board redetermine the amount of petitioner's 1938 [20] income tax deficiency to be \$17,963.61, which amount is \$13,119.51 in excess of the income tax deficiency set forth in the notice of deficiency, claim for which increased deficiency is hereby asserted.

(Signed) J. P. WENCHEL,
T.M.M.

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

Alva C. Baird,
Division Counsel.

T. M. Mather,

Arthur L. Murray,

Special Attorneys,

Bureau of Internal Revenue.

L

ALM:emb 3-6-41

[Endorsed]: U.S.B.T.A. Lodged Mar. 13, 1941.
Filed March 17, 1941. [21]

[Title of Board and Cause.]

REPLY TO AMENDED ANSWER

Comes now Carson and Tahoe Lumber and Flum-

ing Company, petitioner above named, by its attorney, A. W. Helvern, and for reply to the amended answer filed by the above named respondent, alleges and makes denial of the respondent's allegations with respect to respondent's claim for affirmative relief, and states the facts upon which the petitioner relies as a defense as follows:

1. Re-affirms the allegations contained in paragraph 1 of the petition, admitted by the respondent in his amended answer.

2. Re-affirms the allegations contained in paragraph 2 of the petition, admitted by the respondent in his amended answer.

3. Admits that the tax here in controversy is income tax for the year 1938 in the amount of \$17,963.61, but [22] re-affirms all other allegations contained in paragraph 3 of the petition.

4. Re-affirms its allegation contained in paragraph 4 of the petition, admitted by the respondent in his amended answer, with respect to certain lands and improvements sold to George Whittell, but denies respondent's allegations (1) that the fair market value of the said lands as at March 1, 1913 plus the said improvements and personal property was \$90,528.25, and (2) that the Commissioner erred in not determining that the 1938 taxable net income of the petitioner was \$168,583.15.

- 7(a) Admits that during the year 1938 the petitioner sold to George Whittell a certain tract of land located in Douglas County, Nevada, together with certain improvements, and personal property, for a total price of \$300,433.27, which said tract was owned by the petitioner since prior to 1913. Fur-

ther admits that in its federal income tax return for 1938 the petitioner claimed that the fair market value of said tract of land as of March 1, 1913, exclusive of improvements, was \$155,014.

(b) Admits that the respondent erroneously determined that the fair market value of the said land at March 1, 1913, exclusive of improvements, was \$139,512.15, but denies that the fair market value of the said land as at March 1, 1913, exclusive of improvements was not in excess of \$60,000. [23]

(c) Denies that upon the sale of the said land and other property to George Whittell in 1938 for \$300,433.27 that petitioner realized a taxable gain in the amount of \$210,005.02, or any taxable gain in excess of \$77,787.66.

(d) Denies that in the notice of deficiency the respondent understated the 1938 income tax liability of the petitioner by the amount of \$13,119.15, but alleges that there is no deficiency, and that petitioner is entitled to refund of taxes overpaid in the amount of \$1,254.45, on the basis of its allegations as set forth in the petition.

8. Further replying to respondent's amended answer, and by way of setting forth allegations upon which petitioner relies for defense and in support of its claim for refund, the petitioner alleges as follows:

(a) That the fair market value as of March 1, 1913, of said tract of land sold to George Whittell, exclusive of improvements, was \$192,217.36.

(b) That the said valuation of \$192,217.36 as of March 1, 1913 of the said land sold to George Whittell is supported by appraisal made by an expert

familiar with the valuation of the said land and similar lands in the vicinity as at March 1, 1913, and by proven sales of comparable lands out of the same tract and within the vicinity during the years 1910 and 1913, which said values petitioner is prepared to prove and will prove at the trial of this cause. [24]

Wherefore, it is prayed that the respondent's claim for affirmative relief, based upon new matter set forth in his amended answer, be denied and that the Board find that petitioner is entitled to a refund of taxes overpaid in the amount of \$1,254.45.

A. W. HELVERN

Attorney for Petitioner

485 California Street

San Francisco, California

Of counsel:

Helvern & Webster

[Endorsed]: U.S.B.T.A. Filed Apr. 14, 1941.

[25]

[Title of Board and Cause.]

A. W. Helvern, Esq.,

For the petitioner.

Arthur Murray, Esq.,

For the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

The respondent found a deficiency in petitioner's income tax of \$4,844.10 for the calendar year 1938.

The petitioner seeks a refund of \$1,254.45. The respondent in his amended answer asks that the deficiency be increased to \$17,963.61. The only question presented is the gain on sale in the taxable year of certain lands near Lake Tahoe in Nevada and this depends upon the [26] controverted question of the first of March, 1913, fair market value of these 11,187 acres. The facts are as follows:

FINDINGS OF FACT

Petitioner is a corporation and its address is Carson City, Nevada. It filed its income tax return for the taxable year with the collector of internal revenue for the District of Nevada.

In 1938 petitioner sold to George Whittell 11,187 acres of land on or near the eastern shore of Lake Tahoe in Douglas County, Nevada, with its improvements for \$300,000. Petitioner had owned these lands before March 1, 1913. Petitioner reported a sale price of \$300,433.27 (which included an item of \$433.27 for unexpired insurance), a 1913 value (including improvements, costing \$30,428.25, not here in dispute) of \$185,442.25, and a consequent capital gain of \$114,991.02. The respondent in his determination of deficiency reduced the 1913 value of the lands by \$15,501.85, and thus increased the capital gain by the same amount. By amended answer respondent alleges that the property in question had a 1913 value, exclusive of improvements, of \$60,000, as against the petitioner's claim of \$155,014.

The petitioner corporation was organized in 1873 and exchanged its capital stock for certain timber lands in Nevada and California, on and near Lake

Tahoe. The petitioner carried on a lumber and sawmill business until 1896, when practically all merchantable timber had been removed from its lands and the lumbering operations were discontinued. After 1898 land was the only asset the corporation had. In 1907 the capitalization of the petitioner corporation was decreased from \$2,080,000.00 to \$260,000.00. [27]

In 1912 and 1913 the petitioner owned approximately 44,000 acres of land in Nevada and California, all around Lake Tahoe, with about 75,000 shore feet on the Lake. Nearly all of the land on the Nevada side had lake frontage. The land in question was all located on the east side of Lake Tahoe in the State of Nevada.

In 1913 there was very little development on the Nevada side of the Lake. There was no road of any kind from Glenbrook, Nevada, north to the California line, until 1926, when the U. S. Forestry Service put in a narrow road. The road from the Nevada state line on the south northwards to Glenbrook, by way of Zephyr Cove, was poor; in 1912 and 1913 it was of sand and gravel, suitable only for horse-drawn vehicles. Even in 1928 it was rough, wide enough for only one vehicle and had sharp curves and poor distance-visibility. The Nevada side of the Lake was therefore not easily accessible in 1913. A railroad had been extended to Tahoe City, on the California side of the Lake, in 1902 or 1903 and development near there was fairly well advanced by 1912, although at that time the railroad was narrow gauged.

The topography of the Nevada side of the Lake was not as well suited for recreational purposes as that on the California side. The northwest and south sides of the Lake, which are in California, have relatively flat land extending back from the lake shore in all but a few cases from a quarter of a mile to two miles, and at the south end from six to eight miles. The east, or Nevada, side of the Lake has very little flat land except at two or three places. The climatic conditions are less favorable on the east side because of prevailing winds from the west, and there is less precipitation on that side. That portion of petitioner's land on the Nevada side of [28] the Lake, which adjoined the Lake, can not be said to have had any special value in 1913 because of its lake frontage, except as far as a half a mile back from the Lake in most portions and three quarters of a mile in a few.

About 1916, waterfront property on the west or California side of Lake Tahoe near Tahoe City was selling for from five to ten times as much as that on the east side of the Lake.

In 1912 petitioner gave an option to J. B. Brewster, L. B. Edwards and C. M. Wooster to purchase 44,403 acres of land belonging to it and to El Dorado Wood and Flume Co. for a total price of \$778,500. The option agreement was to last for five years but only on condition that the holders of the option would purchase 10 percent of the property the first year, 20 percent the second, 20 percent the third, 20 percent the fourth and 30 percent the fifth. At the end of the first year no purchases had been made pursuant to the option and the holders thereof asked

for an extension of the time. Petitioner in 1913 extended it for one month, but no purchases having been made, it was cancelled. The prices named in the option agreement represented were those which W. S. Bliss, its then president, felt in 1912 would be realized over a period of five years. In 1913 there was a financial depression throughout the country and a consequent reluctance on the part of people having money to make new commitments or investments. In that year and until 1920 there was little demand for the property of petitioner. Property values began to climb slowly until 1920 and after that year more rapidly.

This option agreement was executed because of the desire of the stockholders and trustees of petitioner to liquidate its property which was producing hardly enough income to pay its expenses. After the cancellation [28A] of the option certain stockholders urged the sale of property so that some distribution could be made to them. Few sales were made however and dissention arose between Bliss and the other officers and trustees. The latter believed that Bliss's ideas concerning the values of petitioner's lands were exaggerated, while Bliss believed that the prices at which the other officers were proposing to sell the land were too low. Finally, in 1928, after some litigation, Bliss resigned as an officer and trustee of petitioner and surrendered his stock in return for the conveyance to him of certain property.

During the period 1903 to 1923 the following sales were made of land located on the east side of Lake Tahoe in the State of Nevada:

Vendee	Date	No. of acres	Location	Price per acre
Joseph W. Hall.....	1903	8.58	Shore front (Skunk Harbor).....	\$ 1.25
Joseph W. Hall.....	1903	25.15	Shore front	1.25
Harry O. Comstock.....	1910	2	Shore front on southeastern side of Lake on Calif.-Nev. border (beach)....	500.00
Wm. McFaul	1911	160.00	Small part shore front (Marla Bay)....	1.25
W. F. Detert	1913	640	1¾ miles from shore (good timber land)	6.00
Harry O. Comstock (Vendor)	1915	2	Shore front on southeastern side of Lake on Calif.-Nev. border (beach)....	1,500.00
M. and R. Bigot.....	1917	80	Unknown	12.50
G. R. Cowgill	1919	40.00	½ mile from shore.....	6.00
Norman De Vaux	1920	40.00	¾ mile from shore.....	10.00
Chas. L. Fulstone	1920	1160	Unknown	4.28
Chas. L. Fulstone	1920	1634	Unknown	6.78
Eliz. M. Beatty (vendor)..	1921	153.00	Shore front (between Zephyr Cove and Glenbrook)	26.14
E. G. Schmeidel.....	1921	4½	Shorefront	764.59
Chas. L. Fulstone.....	1922	922	Unknown	5.75
Newhall	1922	290.67	Shorefront (between Skunk Harbor & Secret Harbor)	18.96
R. A. Hardy.....	1922	37.00	Shorefront (Zephyr Cove)	67.56
C. L. Fulstone.....	1923	416.00	Part shore front (Skyland)	21.63

[29]

During the period 1903 to 1923 appraisals were made incident to the settlement of estates of deceased owners of land located on the east side of Lake Tahoe in Nevada, as follows:

Owner	Date	No. of acres	Location	Value per acre
Estate of Duane Leroy Bliss	1910	80	1/4 mile from shore near Glenbrook.....	\$.50
Estate of Elizabeth T. Bliss	1921	80	1/4 mile from shore near Glenbrook.....	4.00
Estate of Duane Leroy Bliss	1910	227 1/2	Shore frone (on Zephyr Cove).....	2.50
[30]				

Petitioner in its Federal capital stock tax return for the fiscal year ended June 30, 1916, which was signed and sworn to by W. S. Bliss, as president, on January 25, 1917, reported as the fair value of the 520 outstanding shares of its stock \$104,000.00, which was computed on the basis of an average value of approximately \$3.00 an acre for all the land owned by the petitioner. The return contains the following note:

This Company is the owner of 35,000 to 40,000 acres of land situate around Lake Tahoe, at an elevation of from 6300 to 9000 feet above sea level, which is rented for grazing purposes at the rate of from 5c to 7½c per acre per year. This income will not pay expenses.

In the last five years this Company has sold 640 acres, netting about \$5.00 per acre. Some of this land might answer for hotel sites, at a higher valuation, but would say as a whole it could not be sold for over \$3.00 per acre if at that. Consequently have written in paragraph 8—520 shares at \$200.00 per share, equal to \$104,000.00.

Petitioner in its Federal income and profits tax return for the calendar year 1918, which was signed and sworn to by W. S. Bliss, as president, on June 11, 1919, in answer to question No. 21, page 6, What was the fair value of the total capital stock of the corporation as determined in the last assessment of the capital stock tax? said "No market value. Assets consist entirely of lands; impossible to make definite estimate."

On its original Federal capital stock tax returns, for the years 1922, 1923, 1924 and 1925, the petitioner declared the fair value of its 520 outstanding shares of capital stock at \$102,949.95, \$92,964.00, \$72,123.00 and \$71,066.00, respectively. These declarations of value, if correlated with petitioner's admitted acreage for the several years, show the following: [31]

Year	Fair value reported for 520 shares	Value of Securities, cash, notes & accounts	Value assigned to land owned	Number of acres of land owned	Average value per acre
1922	\$102,949.95	\$29,504.95	\$73,445.00	31,512	\$2.33
1923	92,964.00	24,082.00	68,882.00	31,428	2.19
1924	72,123.00	33,410.00	38,713.00	28,769	1.35
1925	71,066.00	32,353.00	38,713.00	23,395	1.65

In answer to an inquiry from the Commissioner of Internal Revenue of August 5, 1926, with respect to petitioner's capital stock tax values for years 1919 to 1926, inclusive, the petitioner replied on September 16, 1926, (the letter signed by S. C. Bigelow, as secretary), in part as follows:

This Company was originally organized in 1873 to conduct a wood and lumber business, but for the past thirty years or more that portion of its business has been discontinued and it is now but a liquidating company, the limited rentals and other incidental receipts not even paying taxes and operating expenses, and there has been but a limited demand to purchase the property of the company. * * * The truth is—the property is worth just what the company can get for it; there has been but a limited demand for many years and there is a serious

question as to whether this liquidating company should pay a Capital Stock Tax, but we wish above all things to be fair, and we are therefore enclosing amended returns for the years 1923, 1924 and 1925 on basis of the capitalized value. We feel that the previous returns have been fair in view of the facts above recited, and should you agree, shall be pleased if you will cancel the enclosed returns; if you feel however, that the latter should be filed, we respectfully request that the returns previous to these be accepted as representative of a fair capitalized value. * * *

The 11,187 acres of land here in question were included in the land valued by petitioner in computing its 1916 capital stock tax return at an average value of \$3.00 an acre. It was the opinion of William S. Bliss in 1917 that this was the average value of the corporation's land in that year, when he [32] signed the 1916 capital stock tax return.

On January 29, 1918, at a meeting of a majority of the trustees of the petitioner, there was adopted the following resolution, which was approved by W. S. Bliss, as President:

Resolved: The Carson & Tahoe Lumber & Fluming Co., represented by its duly qualified and acting officers, desiring to comply with the United States Income Tax Law, in order to arrive at the value of the Company's property as of March 1st, 1913, does hereby fix as the the actual value of its real estate holdings

located in Washoe, Ormsby and Douglas Counties, Nevada, and El Dorado and Placer Counties, California, as being of the value of \$260,000, as of date of March 1st, 1913.

In 1913 the petitioner had about 44,000 acres in the tracts above referred to.

During the year 1913 the petitioner owned approximately 17,970 acres of land in Douglas County, Nevada, including the 11,187 acres here in question. All the 17,970 acres were assessed for State, School and County taxes levied in that year without any segregation of land into classes on the basis of a value of approximately \$1.44 an acre. On January 1, 1923, when Wm. D. Park, assessor at the time of the hearing, came into office, all this land was assessed, still without any segregation into classes, at \$1.25 an acre. The first segregation was made in that year, when mountain land was classified at \$1.25 or \$2.00 and grazing land at \$8.00, \$5.00 and \$3.00, depending upon its quality. No segregation of lake front property in Douglas County was made until 1926, 1927 or 1928, when such land along the lake became more valuable and was selling at good prices. Park was assisted in his classifications of land by Charles Fulstone, Land Commissioner of the Nevada Tax Commission, the same person who purchased several parcels of Lake Tahoe land from the petitioner, including the parcel called "Skyland". [33]

For the years 1920 and 1921 the petitioner filed with the assessor of Douglas County, written declara-

tions as to the value of its real property in that County, declaring it without classification at \$1.25 an acre. In each instance the assessor raised the valuation to \$2.00 an acre.

Frank Murphy was vice-president of the petitioner company from 1926 to 1939. From 1928 on, after W. S. Bliss and certain members of his family withdrew from the corporation, there remained outstanding only 358 shares of petitioner's stock. Murphy owned five of these shares and during 1935 and 1936 he had proxies to 219.3 and 263.3 more shares, respectively.

During 1935, Frank Murphy offered to the United States Forestry Service, all the backlands owned by the company, in Douglas County, Nevada, including the backlands of the acreage here in question, for \$3.00 an acre, and all the company's shore land in that County, exclusive of Zephyr Cove, for \$10.00 an acre. At the same time he offered to the Forestry Service 2,240 acres of backlands owned by the company, in California, south of the Lake, for \$3.00 an acre. After having all these lands checked by its appraisers, the Forestry Service concluded that the California lands offered were more valuable than the backlands in Douglas County, Nevada, and in 1938 it bought the California lands for \$3.00 an acre.

The fair market value of the 11,187 acres of land here in question, as of March 1, 1913, exclusive of improvements, was \$75,000. [34]

OPINION

Kern: There is a voluminous record in this proceeding and we have not deemed it necessary or feasible to embody in our findings each evidentiary fact which it contains. For example there is evidence concerning the sales of property in the State of California located on the south, west and north-west sides of Lake Tahoe and occurring over a period of some 35 years. We have contented ourselves with setting out in our findings only those sales taking place between 1903 and 1923 and covering property located on the east or Nevada side of the Lake where petitioner's property was located. Because of the differences in conditions which we have outlined in our findings, we have felt that sales of property on other sides of the Lake are of little help in ascertaining the fair market value as of March 1, 1913, of petitioner's land. Neither do we believe that sales made over ten years before or ten years after the basic date are of material assistance.

However, we have carefully considered all of the facts disclosed by record, together with the opinion testimony offered by both parties. Having thus considered all of the evidence presented, in the light of the cases cited by both parties and having given due consideration to all of the elements of value and principles of valuation referred to by such authorities, we have reached the conclusion embodied in our ultimate finding that the March 1, 1913 fair market value of petitioner's land involved herein, exclusive of improvements was \$75,000.

In addition to the authorities cited by the parties we call attention to two recent cases on the general subject of valuation, Commissioner v. Marshall, [35] ---- Fed. (2) ---- (CCA-2, Feb. 3, 1942); Helvering v. Safe Deposit and Trust Co. of Baltimore, Trustee, ---- U. S. ---- (April 13, 1942).

Decision will be entered under Rule 50.

Entered Jun 23 1942 [36]

United States Board of Tax Appeals
Washington

Docket No. 103735

CARSON AND TAHOE LUMBER AND FLUM-
ING CO.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the memorandum findings of fact and opinion of the Board entered June 23, 1942, the respondent herein on July 29, 1942 filed a recomputation, and on August 31, 1942 the petitioner filed an agreement to such recomputation. Now, therefore, it is

Ordered and Decided: That there is a deficiency in income tax for the calendar year 1938 in the amount of \$15,488.61.

[Seal] (Signed) JOHN W. KERN

Member

Enter:

Entered Sep 1 1942 [37]

United States Circuit Court of Appeals

For the Ninth Circuit

Tax Court of the United States

Docket No. 103735

CARSON AND TAHOE LUMBER AND FLUM-
ING COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW BY THE UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

To the Honorable Judges of the United States Cir-
cuit Court of Appeals for the Ninth Circuit:

Comes now Carson and Tahoe Lumber and Flum-
ing Company, by its attorneys, George H. Koster
and Llewellyn A. Luce, and respectfully shows:

Carson and Tahoe Lumber and Fluming Company
respectfully petitions the United States Circuit

Court of Appeals for the Ninth Circuit to review the decision of The Tax Court of the United States (formerly known as the United States Board of Tax Appeals) entered on September 1, 1942, ordering and deciding that there was a deficiency in petitioner's Federal income tax for the calendar year 1938 in the amount of \$15,488.61.

I.

JURISDICTION

Petitioner is a corporation duly organized and existing under the laws of the State of Nevada and maintains its principal [38] office in Carson City, Nevada. Petitioner's Federal income tax return for the calendar year 1938 was filed with the Collector of Internal Revenue for the District of Nevada, whose office is located in Reno, Nevada and within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

The case was tried and decided by the United States Board of Tax Appeals. Under Section 504 of the Revenue Act of 1942, approved October 21, 1942, the name of the Board of Tax Appeals was changed to "The Tax Court of the United States" effective as of October 22, 1942. Accordingly the Board of Tax Appeals will be hereinafter referred to as "The Tax Court of the United States."

The jurisdiction of this Court to review the decision of The Tax Court of the United States aforesaid is founded on Section 1141, Internal Revenue Code, Title 26 United States Code, Section 1141,

U.S.C.A., as amended by Section 504 of the Revenue Act of 1942.

The Commissioner of Internal Revenue of the United States hereinafter referred to as "respondent" determined a deficiency in petitioner's income tax for the calendar year 1938 in the amount of \$4,844.10 and on April 11, 1940, in accordance with the provisions of Section 272 of the Internal Revenue Code sent to petitioner by registered mail a notice of said deficiency. Thereafter and within ninety days from April 11, 1940, petitioner duly filed its appeal to the Tax Court of the [39] United States from the aforesaid determination of a deficiency in tax and alleged therein that there was no deficiency due from petitioner for the calendar year 1938 and that petitioner was entitled to a refund in tax of \$1,254.75 for said year. Thereafter the respondent duly filed his answer to petitioner's appeal and on March 13, 1941 filed an amended answer affirmatively alleging that the deficiency of \$4,844.10 as determined in the aforesaid notice of deficiency should be increased to \$17,963.61. The petitioner thereafter duly filed its reply to the said amended answer, denying that it owed any deficiency whatsoever and reaffirming the allegations set forth in its original appeal.

Thereafter on June 25, 1941 the case came on for hearing in San Francisco, California. On June 23, 1942 The Tax Court of the United States (then known as the Board of Tax Appeals) entered a Memorandum Findings of Fact and Opinion and

on September 1, 1942 The Tax Court of the United States (then known as the Board of Tax Appeals) entered its decision ordering and deciding that there was a deficiency of \$15,488.61 in petitioner's Federal income tax for the calendar year 1938.

II.

NATURE OF CONTROVERSY

The controversy herein concerns the petitioner's correct income tax liability for the calendar year 1938.

During the year 1938, petitioner sold to one George Whittell 11,187 acres of land on or near the shores of Lake Tahoe [40] in Douglas County, Nevada, with improvements thereon, for a total sum of \$300,433.27.

The issue involved is the amount of capital gain derived from the sale. This in turn depends upon the March 1, 1913 value of the 11,187 acres sold because this acreage was owned and held by the petitioner on March 1, 1913 and both parties agree that the March 1, 1913 value of the 11,187 acres is as a matter of law the proper cost basis for computing the gain on the sale in 1938. The gain is determined by subtracting from the selling price of the acreage in 1938 the fair market value thereof as of March 1, 1913. The parties further agree that the improvements on the land had a value or cost basis of \$30,428.25 on March 1, 1913.

Accordingly the question for decision by The Tax Court of the United States was the fair market

value of the 11,187 acres of land on March 1, 1913.

In its income tax return for 1938 the petitioner reported a fair market value on March 1, 1913 for the acreage of \$155,014 and a capital gain from the sale of \$114,991.02. The respondent determined in his notice of deficiency that the fair market value of the lands on March 1, 1913 was \$139,512.15, increased the capital gain on the sale by \$15,501.85 and proposed an additional tax against the petitioner of \$4,844.10.

On March 13, 1941 the respondent filed an amended answer alleging that the acreage had a fair market value as of March 1, [41] 1913 of \$60,000 instead of \$139,512 as he had previously determined in the deficiency notice and claimed that the deficiency in tax against the petitioner should on this basis be increased to \$17,963.61. Thus there were at least three determinations by the parties of the March 1, 1913 value of the acreage sold, as follows:

1. A value of \$155,014 shown by petitioner in its 1938 return.

2. A value of \$139,512.15 determined by respondent in the notice of deficiency dated April 11, 1940 from which petitioner appealed to the Tax Court.

3. A value of \$60,000 claimed by respondent in the amended answer filed March 13, 1941.

In the Memorandum Findings of Fact and Opinion entered by the Tax Court of the United States on June 23, 1942, it found a fair market value for the 11,187 acres of \$75,000 as of March 1, 1913. In its decision of September 1, 1942 the Court determined a deficiency in income tax against the peti-

tioner for 1938 of \$15,488.61 in lieu of the deficiency of \$4,844.10 originally determined by respondent. This increase in the deficiency was entirely due to the finding by the Court that the acreage sold had a fair market value as of March 1, 1913 of \$75,000 instead of \$155,014, as reported by petitioner on its 1938 return and in lieu of \$139,512.15 as determined by respondent in the notice of deficiency. [42]

III.

ASSIGNMENTS OF ERROR

In making and rendering its decision, as aforesaid, The Tax Court of the United States committed the following errors upon which your petitioner relies as a basis for this proceeding:

The Tax Court of the United States erred:

1. In determining a deficiency in petitioner's income tax for the calendar year 1938 in the amount of \$15,488.61.
2. In failing to determine that there was no deficiency in income due from petitioner for the year 1938 and that the petitioner had overpaid its Federal income tax for 1938 by the sum of at least \$1,254.75.
3. In finding that the fair market value as of March 1, 1913 of the 11,187 acres of land sold by petitioner in 1938 was \$75,000.
4. In failing to find that the fair market value as of March 1, 1913 of the 11,187 acres of land sold by petitioner in 1938 was not less than \$155,014 as reported by petitioner in his income tax return for 1938.

5. By finding that the acreage aforesaid had a fair market value of \$75,000 as of March 1, 1913 without setting forth any reasons for determining such a value of \$75,000 or showing by any computation, data or detail how such a figure was reached or determined. The said valuation of \$75,000 as found by the [43] Tax Court was not in accord with the determination of respondent in his notice of deficiency, nor with the figure claimed by respondent in his amended answer, nor with the March 1, 1913 value as shown by petitioner in its 1938 return and claimed before the Tax Court.

6. The March 1, 1913 value of \$75,000 as found by the Tax Court was not supported by any evidence and was contrary to the evidence adduced by the petitioner at the trial of the case.

7. In any event, the Tax Court erred by finding a lower value as of March 1, 1913 for the said acreage than the value of \$139,512.15 determined by respondent in his notice of deficiency dated April 11, 1940. There was no evidence adduced at the trial which would substantiate a fair market value as of March 1, 1913 of less than \$139,512.15 for the said acreage as found by the respondent in the notice of deficiency upon which his prima facie case was based.

8. The Tax Court of the United States erred in that there is neither in the findings of fact nor the memorandum opinion of the Court, any findings to sustain the Court's conclusion that the said acreage had a fair market value of \$75,000 as of March 1, 1913.

9. The Tax Court erred by failing to make a complete and sufficient findings of fact showing how the figure of \$75,000 was determined to be the fair market value as of March 1, 1913 of the acreage sold in 1938. [44]

10. The Tax Court erred by disregarding the un rebutted evidence of petitioner and reaching an independent conclusion of its own that the acreage in question had a fair market value of \$75,000 on March 1, 1913.

11. The Tax Court erred in that the notice of deficiency dated April 11, 1940 established a prima facie case for respondent that the acreage involved had a fair market value on March 1, 1913 of \$139,512.15 and the evidence adduced by respondent failed to rebut the presumption of value established by the deficiency notice or lend any support to respondent's amended answer claiming a March 1, 1913 value of \$60,000. In any event the Tax Court erred by finding a March 1, 1913 value for said acreage of less than the figure of \$139,512.15 determined by respondent in the notice of deficiency.

12. The Tax Court erred in not redetermining the deficiencies in favor of petitioner and against the respondent.

Wherefore, the taxpayer petitions that the decision of The Tax Court of the United States be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit and that a transcript of the record be prepared in accordance with law and with the rules of said Court and transmitted to the Clerk

of said Court for filing, and that appropriate action be taken to the end that the errors complained of be reviewed and corrected [45] by said Court.

Respectfully submitted,

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LLEWELLYN A. LUCE

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Counsel for Petitioner.

District of Columbia—ss.

Llewellyn A. Luce, being first duly sworn, says that he is the attorney for the petitioner on review and as such is duly authorized to verify the petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision in the above entitled cause; that he has read the said petition and is familiar with the statements contained therein and that the facts therein stated are true except such facts as may be stated upon information and belief and these facts he believes to be true.

LLEWELLYN A. LUCE

Subscribed and sworn to before me this 27th day of November, 1942.

[Seal]

ELSIE P. DAMERON

Notary Public in and for the
District of Columbia.

My Commission Expires Oct. 15, 1943.

[Endorsed]: Filed Nov. 27, 1942. [46]

The Tax Court of the United States

Docket No. 103735

CARSON AND TAHOE LUMBER AND FLUM-
ING COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF FILING PETITION FOR REVIEW

To Hon. J. P. Wenchel, Attorney for Respondent,
Chief Counsel, Bureau of Internal Revenue,
Washington, D. C.

You are hereby notified that on the 27th day of November, 1942, a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of The Tax Court of the United States (formerly United States Board of Tax Appeals) heretofore rendered in the above entitled cause, was filed with the Clerk of the Court. A copy of the petition as filed is attached hereto and served upon you.

LLEWELLYN A. LUCE

937 Munsey Building,

Washington, D. C.

Of Counsel for Petitioner.

Service of a copy of the foregoing notice, together with a copy of the petition for review, is hereby acknowledged this 27th day of November, 1942.

J. P. WENCHEL,

Chief Counsel, Bureau of Internal Revenue.

[Endorsed]: Filed Nov. 27, 1942. [47]

Before the United States Board of Tax Appeals

[Title of Cause.]

Post Office Building, San Francisco, California.

June 25, 1941. 10:00 o'clock A.M.

Before: John W. Kern.

Met pursuant to notice.

Appearances:

A. W. Helvern,

485 California Street, San Francisco, California, appearing for the Carson and Tahoe Lumber and Fluming Company, the Petitioner.

Arthur L. Murray,

appearing for the Commissioner of Internal Revenue, the Respondent. [49]

PROCEEDINGS

The Member: Docket No. 103735, Carson and Tahoe Lumber and Fluming Company.

Are the parties ready?

Mr. Murray: Ready.

Mr. Helvern: Ready for Petitioner.

The Member: Will counsel please state their appearances for the record?

Mr. Helvern: A. W. Helvern for the Petitioner.

Mr. Murray: Arthur L. Murray for Respondent.

[52]

Mr. Helvern: Mr. Bliss, will you take the stand?

MR. WILLIAM S. BLISS

a witness called on behalf of Petitioner, being first duly sworn, testified as follows:

The Clerk: State your full name, please.

The Witness: William S. Bliss, B-l-i-s-s.

Direct Examination [56]

Q. (By Mr. Helvern) Mr. Bliss, will you state your full name? A. William S. Bliss.

Q. And where were you born?

A. Gold Hill, Nevada.

Q. And on what date? What year?

A. August 25, 1865.

Q. Were you educated in Nevada? A. Yes.

Q. Where?

A. The schools, and then I went East to Massachusetts Institute of Technology.

Q. Massachusetts Institute of Technology, yes. What is your profession, Mr. Bliss?

A. Engineering; Civil Engineering; Mining Engineer.

(Testimony of William S. Bliss.)

Q. And anything else? Have you done anything else besides Civil Engineering?

A. Well, mining.

Q. Mining. And you are a real estate operator, are you not?

A. Oh, yes.

Q. Do you have a license to practice?

A. Yes.

Q. And you have had that for many, many years, I believe?

A. Yes.

Q. Mr. Bliss, what is your connection or what was your con- [57] nection with the Carson and Tahoe Lumber and Fluming Company?

A. I was first manager and vice-president.

Q. When did you become the manager of that company?

A. In 1907 when my father died.

Q. Your father died in 1907 and you became the manager. Your father had been the president and one of the principal stockholders?

A. The manager. He was the manager.

Q. And the manager. You succeeded your father?

A. Yes.

Q. In 1907?

A. Yes.

Q. You also became president of the company some time later, did you not?

A. When Mr. Yerington died.

Q. About what date was it when Mr. Yerington died?

A. I don't know exactly. I don't remember now. It was 1911, wasn't it?

Q. I think it was 1910.

A. Or '12.

(Testimony of William S. Bliss.)

Q. 1910. Does that seem the right date? Mr. Yerington had been the president and you succeeded him? A. Yes.

Q. Was Mr. Yerington a heavy stockholder in the company? [58] A. Yes.

Q. And what happened to his shares of stock after his death? A. It went into his estate.

Q. And did he leave a widow? A. Yes.

Q. And children? A. And children.

Q. When did you sever your connection with the Carson and Tahoe Lumber and Fluming Company, this Petitioner? A. I think it was '28.

Q. February, '28? A. Yes.

Q. And what have you done since 1928?

A. Well,— (Pause).

Q. Your principal occupation since 1928 when you severed your connection?

A. Well, running that land that we traded for.

Q. You traded certain stock, I believe?

A. Yes.

Q. You and certain other stockholders in your immediate family? A. Yes.

Q. Traded certain stock for certain lands?

A. That's it.

Q. And these lands that were received by you and your bro- [59] thers and sister were part of the lands that you had appraised previously for Carson and Tahoe, I believe? A. Yes, sir.

Q. Mr. Bliss, in your opinion were you familiar with the lands in the vicinity of Lake Tahoe, say, in the year 1910, 1912 and since that date?

(Testimony of William S. Bliss.)

A. Yes, sir.

Q. In what manner did you become familiar with those lands?

A. Well, I was in the logging business up there and did all the engineering, the surveying for the company.

Q. Approximately how much land did the company own in the vicinity of Lake Tahoe?

A. 44,000 acres.

Q. Sir? A. 44,000 acres.

Q. 44,000 acres. That was a large body of land, was it not, compared to the area of Lake Tahoe?

A. Yes. And there was 75,000 feet of shore.

Q. 75,000 feet of shore? A. Yes.

Q. And 44,000 acres of land? A. Yes.

Q. You stated that you were a Civil Engineer. Did you ever do any surveying or familiarize yourself with the nature of those lands by surveying? What were they? Roads? [60]

A. I ran railroads.

Q. Yes.

A. And logging roads and surveyed the land.

Q. You built the Truckee & Tahoe Railroad, did you not? A. Yes.

Q. And what other railroads did you build there as Civil Engineer?

A. Bijou—I don't know the name of it. It is a logging road about 15 miles.

Q. Mr. Bliss, you succeeded your father as the president of this company and you were actively the general manager from 1910 on? A. 1907.

(Testimony of William S. Bliss.)

Q. 1907. Pardon me.

The Member: On what part of the lake is that land located?

The Witness: All around the lake; North, South.

Mr. Helvern: I will present exhibits later, showing the exact location of the land, your Honor.

Q. (By Mr. Helvern) Mr. Bliss, I hand you a paper known as Exhibit No. 1 and that is a meeting of stockholders at Carson City, Nevada, September 18, 1907.

A. That was just before my father died.

Q. Just before your father died. You have looked at this and you are familiar with its contents, are you not? [61]

A. I don't know whether I am or not.

Q. Mr. Bliss, in this meeting of stockholders it was decided to reduce the capitalization of the company from 98,800 shares to 520 shares?

A. Uh-huh (Affirmative).

Q. And it was also decided to reduce the capital stock value from 2,080,000 to 260,000 shares.

Correction: That was \$2,080,000 was the original value of the stock, reduced to \$260,000. That \$260,000 Mr. Bliss, is indicated here (Indicating) as being to cover 520 shares with a value of \$500 each.

Is that your recollection? A. Yes.

Q. The company was then capitalized at \$260,000 effective from September 18, 1907, according to this? A. Yes.

Mr. Helvern: I present this.

The Member: You offer that as an exhibit?

(Testimony of William S. Bliss.)

Mr. Helvern: I offer this as Petitioner's Exhibit No. 1.

Mr. Murray: No objection.

The Member: Accepted in evidence.

The Clerk: One.

(The copy of minutes of meeting of stockholders, at Carson City, Nevada, September 18, 1907, so offered and received in evidence was marked Petitioner's Exhibit No. 1 and made a part of this record.) [62]

Mr. Helvern: This is a list of the Petitioner's Exhibits.

Q. (By Mr. Helvern) Mr. Bliss, I hand you two Exhibits, Exhibits Nos. 2 and 3. These Exhibits are a meeting of the Trustees of the Carson and Tahoe Lumber and Fluming Company dated September 12, 1910. This meeting of the Trustees authorized a sale of 239.51 acres of land to one F. J. Pomin for \$6,000. You recall that transaction, do you? A. Yes.

Q. I present you with Exhibit No. 3, a meeting of the Trustees of the Company dated November 12, 1910, authorizing the sale of land to one V. S. McClatchy for a sale price of \$1,500. The acreage is stated as being seven acres. A. Seven.

Mr. Helvern: Seven acres of land.

I submit these as Petitioners Exhibits Nos. 2 and 3.

Mr. Murray: No objection.

The Member: Accepted in evidence.

(Testimony of William S. Bliss.)

(Copies of minutes of meeting of stockholders so offered and received in evidence, were marked Petitioner's Exhibits Nos. 2 and 3.) [63]

Q. (By Mr. Helvern) Mr. Bliss, I understand that these lands owned by the Petitioner were, some of them, timberlands. Is that so? They were timberlands, were they not?

A. Yes, years before.

Q. They had timber on them. About when did they complete logging off all the timber on those lands?

A. Well, they shut down on account of the mines giving out and electric pumps coming in.

Q. No more sale for timber?

A. And no more sale for timber, and they shut down in 1898.

Q. 1898. What assets did the company own from 1898 on? Did they own any other assets besides the land? A. No other.

Q. Had it been the company's policy to declare dividends out of their incomes as they went along?

A. Yes.

Q. From whatever profits might be made by the sale of lumber and other profits? A. Yes.

Q. After they quit logging and selling lumber in 1898 what source of income did the company have? A. They had no source. [65]

Q. No source. They did have a source of income as they sold some of their lands?

A. Yes. They sold some of their equipment.

(Testimony of William S. Bliss.)

Q. Oh, they sold some of their old railroad equipment? A. Yes.

Q. That they used to log with? A. Yes.

Q. And they sold that and they also made these two sales that I have just questioned you about in 1910, one to Pomin, one to McClatchy?

A. Yes.

The Member: What kind of lumber was it?

The Witness: Mostly timbers for the Comstock mines.

The Member: What kind of trees?

The Witness: Oh, yellow pine.

The Member: Yellow pine?

The Witness: And fir. And the limbs were used for wood.

The Member: Is there any redwood around there?

The Witness: No. There is cedar, though.

The Member: Cedar.

Q. (By Mr. Helvern) Mr. Bliss, I hand you a paper called "Exhibit 4". This is Petitioner's Exhibit 4 and it is a notice signed by you, a copy of a notice signed by you, to Mr. Yerington, the secretary of the company, and dated March [66] 29, 1912. This notice advises the secretary, which you evidently signed as president, that there would be a meeting of the company at 10:00 A. M. on April 11, 1912. I will read the purpose of this: to consider the advisability of selling all of the property of said corporation, of entering into contracts for

(Testimony of William S. Bliss.)

the sale thereof, of giving options thereon, and of authorizing the execution of conveyances, et cetera; the advisability of amending certain sections of the By-Laws of the corporation, and such other business as may come before the meeting.

I hand you another paper called "Exhibit 5," which is a meeting of the stockholders of the company, held on the 11th day of April, 1912 at 10:00 o'clock, the meeting which you asked the secretary to call. At this meeting a majority of the stockholders are represented. A. What date?

Q. Sir? A. What date?

Q. This meeting was held April 11, 1912.

A. Oh, yes.

Q. Briefly, in this meeting the stockholders approved the entering into an agreement with you as a manager of the company and the person qualified to sell all the company's land within a period of five years from that date.

I hand you Exhibit No. 6, a special meeting of the [67] Board of Trustees of the company, held at 10:30 A. M., April 11, 1912, at which the company was authorized to enter into an agreement with you to sell all the lands of the company at a price fixed in a schedule submitted, which is known as Exhibit A in the minutes, which we will submit as another Exhibit; and you were to sell these lands and to receive a ten per cent commission upon such sales.

I hand you Exhibit No. 7. Exhibit 7 is an adjourned meeting of the Board of Trustees of the

(Testimony of William S. Bliss.)

Carson and Tahoe Lumber and Fluming Company held at one o'clock on April 11, 1912, the same day as the previous meeting in which the company is authorized to enter into an agreement with one J. B. Brewster, L. B. Edwards and C. M. Wooster, as parties of the second part, an agreement whereby these parties have an option to purchase all of the lands of the company at the prices stated in this amendment or in this Exhibit A in the minutes, that being an appraisal made by yourself.

Now, Mr. Bliss, I hand you a map known as Exhibit 8. Mr. Bliss, do you recall ever seeing this map before? A. I had it made.

Q. You had it made. You mean you had it drawn? A. Yes.

Q. You yourself are responsible for this map, are you? A. Yes.

Q. Mr. Bliss, this is the minute book of the corporation and [68] these are the minutes of the adjourned meeting of April 11, 1912, and this has a blueprint map which is designated as Exhibit B and forms a part of the minutes. Without going into detail at this time, is that map that I have just handed you a true copy of this map? A. Yes.

Q. You made both of them, did you not?

A. This is the original.

Q. Yes. You prepared this? A. Yes.

Q. Yourself? A. Yes.

Q. And you prepared that one? A. Yes.

Q. To the best of your knowledge and belief that is a true copy of this map?

(Testimony of William S. Bliss.)

A. Yes, sir. Wait a minute! This is the wrong map, I think, isn't it? You have got another one, haven't you?

Q. Yes. This is the right one. I will give you the other one later. A. Yes.

Q. Mr. Bliss, in our Exhibit 7, the minutes of the Trustees meeting, the adjourned meeting of April 11, 1912, there is contained a schedule called "Exhibit A"? A. Yes. [69]

Q. Do you recognize that exhibit?

A. Yes, sir.

Q. What is that exhibit? A. Well,—

Q. (Interposing) Part of the minutes?

A. (Continuing) —it gives the acreage and values and the shore and value of that.

Q. In other words, it gives the feet of shore, the acres and the total value?

A. The total value.

Q. In certain total values? A. Yes, sir.

Mr. Murray: I object to that, if that is meant to be a conclusion of the value. If he is identifying the document as to what he thought it was—

The Member: (Interposing) I think he was just identifying it.

Mr. Helvern: I will correct my statement. For the benefit of the Court and opposing counsel, I am merely stating what this Exhibit contains. It contains values indicated in dollars and these values are a part of the company's records. I will explain what those values mean in a moment or ask Mr. Bliss to explain them.

(Testimony of William S. Bliss.)

Mr. Murray: Well, if it is understood that they are just values that appear there without proving the value, [70] that is all right.

Mr. Helvern: That is understood.

Q. (By Mr. Helvern) Mr. Bliss, there are certain values in this Exhibit? A. Yes.

Q. The total of those seem to be \$778,500?

A. Yes.

Q. The total acreage is shown as 44,403 acres?

A. Yes.

Q. And the total feet of shore shown in this Exhibit A is 75,880? A. That's right.

Q. This schedule is broken down into 22 items, Nos. 1 to 22. Those, I believe, are block numbers, are they? A. Yes.

Q. And what do the block numbers mean? A certain area of land within certain boundaries?

A. That's it.

Q. All land owned by the Carson and Tahoe?

A. That's right.

Q. Mr. Bliss, what do these values mean? In your opinion, what are these values in this Exhibit? How did the values get into this Exhibit?

A. Well, I went over the land and estimated the value.

Q. You estimated these values? [71]

A. Yes, sir.

Q. When did you make this estimate?

A. 1912—'18—yes, 1912.

Q. 1912. Was it about the time this agreement

(Testimony of William S. Bliss.)

was entered into between you and the company to sell the land? A. That was the time.

Q. And this was for the purpose of determining what the minimum amount was that the land could be sold for? A. That's right.

Q. Is that true?

A. That's right.

Q. Mr. Bliss, in your opinion, at that time was this a realizable value that could be realized in accordance with the terms of this agreement?

A. Yes.

Q. You thought you could get that?

A. Yes.

Q. The terms of that agreement were for a period of five years, Mr. Bliss? A. Yes.

Q. Did you think at the time and did you draw this up thinking that you could probably sell the land within five years at that price?

A. Edwards and Webster had been talking about it and they practically agreed to take it. [72]

Q. Excuse me, Mr. Bliss.

A. And that was——

Q. (Interposing) Mr. Bliss, you refer to "Webster and Edwards". Do you mean to refer to——

A. (Interposing) Brewster.

Q. (Continuing) ——Edwards and Brewster? Are Brewster and Edwards the persons named in this Exhibit 7 in the minutes as persons who entered into the agreement with the company?

A. Yes, at that time.

(Testimony of William S. Bliss.)

Q. They named three persons: Brewster, Edwards and Wooster? A. Yes.

Q. What business were Brewster, Edwards and Wooster in? A. Real Estate.

Q. And where were their headquarters? In Nevada?

A. Their main office was in the Mills Building.

Q. In the Mills Building in San Francisco?

A. Yes.

Q. Were they a large concern?

A. Well, I suppose they were.

Q. Well, anyhow they handled large tracts of land apparently? A. Yes.

Mr. Murray: I will object to all this leading. I am letting all this leading go in.

The Member: I also call your attention to the fact that those Exhibits are not in the record yet.

[73]

Mr. Helvern: Without objection from counsel, I believe, I would like to submit as the Petitioner's Exhibit No. 4, copy of a letter dated March 29th from W. S. Bliss authorizing the holding of a stockholders meeting of the company.

Mr. Murray: No objection.

Mr. Helvern: Petitioner's Exhibit 4.

The Member: Accepted in evidence.

(The copy of letter so offered and received in evidence was marked Petitioner's Exhibit No. 4 and made a part of this record.)

(Testimony of William S. Bliss.)

Mr. Helvern: As Exhibit 5 a copy of the minutes of a special meeting of the stockholders of the company dated April 11, 1912, authorizing and directing sale of all the lands of the corporation.

Mr. Murray: No objection.

The Member: Accepted in evidence.

(The copy of minutes of special stockholders meeting so offered and received in evidence was marked Petitioners Exhibit No. 5, and made a part of this record.)

PETITIONER'S EXHIBIT No. 5

Special Meeting of the Stockholders of the Carson and Tahoe Lumber and Fluming Company, held at the office of the Company, Carson City, Nevada, on the 11th day of April, 1912, at the hour of 10 o'clock A. M.

The meeting was called to order by the President, W. S. Bliss, who presided throughout the meeting.

The Secretary announced that the call for this meeting had been mailed, and that proof of the publication and service of notice of the time and place of said meeting had also been filed. Said call and proof of publication and service were thereupon produced and read, whereupon, on motion duly made and seconded and unanimously carried, the same were approved.

The following stockholders representing the number of shares of stock set opposite their respective

(Testimony of William S. Bliss.)

names, were present either in person or by proxy, and participated in said meeting, to-wit:

Name	Present		Absent
	In Person	By Proxy	
W. D. Tobey.....		26	
Elizabeth T. Bliss.....		170	
Ogden Mills		79	
Elisabeth Mills Reid.....		80	
W. S. Bliss.....	10		
Jno. F. Cannon.....	5		
E. B. Yerington.....	25	4/5	
Clara V. Yerington.....		30	4/5
Jennie Avery Yerington.....		30	4/5
J. A. Yerington.....		30	4/5
H. H. Yerington.....		30	4/5
H. H. Taylor.....			1
	<hr/>	<hr/>	<hr/>
	40	478	1
	4/5	1/5	

The President announced that a majority of the stock of the corporation was represented at the meeting and qualified to vote on all propositions coming before it.

On motion duly seconded and unanimously carried, the following resolution was adopted:

Whereas, this corporation owns certain tracts of land lying around Lake Tahoe and located in the State of California and Nevada, which this corporation desires to dispose of either as a whole or in subdivision; now, therefore, be it

Resolved: That this corporation sell, grant, transfer and dispose of all of the real property of this corporation situate, lying and being on the

(Testimony of William S. Bliss.)

shores of, and in the vicinity of Lake Tahoe, and located in the States of California and Nevada.

Resolved Further: That the Board of Trustees of this corporation be, and they are hereby directed, authorized and empowered to take all steps and proceedings of every character and description necessary, proper or advisable in connection with the sale and disposition of all of said real property, and that said Board of Trustees determine upon each and all of the terms and conditions upon which said property shall be sold, and that said Board of Trustees have full power and authority to employ agents and brokers or other persons in connection with, and to negotiate the sale and disposition of said real property, and that said Board be given and granted full power and authority in the premises.

[Endorsed]: U. S. B. T. A. Filed June 25, 1941.

Mr. Helvern: Exhibit 6, the minutes of a special meeting of the Board of Trustees of the company dated April 11, 1912 authorizing the entering into an agreement of the company with W. S. Bliss for the sale of the company's lands, for which Mr. Bliss is to receive a compensation of ten per cent.

[74]

Mr. Murray: No objection.

Mr. Helvern: Of the realized sale.

The Member: Accepted in evidence.

(Testimony of William S. Bliss.)

(The minutes of special meeting of Board of Trustees so offered and received in evidence were marked Petitioner's Exhibit No. 6 and made a part of this record.)

PETITIONER'S EXHIBIT No. 6

Special Meeting of the Board of Trustees of the Carson and Tahoe Lumber and Fluming Company, duly called and held on the 11th day of April, 1912, at the hour of 10:30 A. M. of said day, at the office of the company, in the City of Carson, County of Ormsby, State of Nevada.

On roll call the following Trustees were noted present:

W. S. Bliss

J. F. Cannon

E. B. Yerington

The President, W. S. Bliss, presided at the meeting.

On motion, duly made and seconded, J. F. Cannon was unanimously elected Vice-President, to fill the vacancy occasioned by the death of Mr. H. H. Taylor.

The President, W. S. Bliss, called the Vice-President, J. F. Cannon, to the chair, and retired from the meeting.

On motion of Trustee Yerington, seconded by Trustee Cannon, the following resolution was unanimously adopted, to-wit:

Whereas, at a special meeting of the stockholders of this corporation held on the 11th day of April,

(Testimony of William S. Bliss.)

1912, it was declared by resolution, duly adopted, that all of the real property of this corporation situate on the shores of, and in the vicinity of Lake Tahoe, should be sold and disposed of; and

Whereas, this Board of Trustees was by said resolution given full power and authority to act in the matter of the sale and disposition of said real property, and in all matters pertaining thereto; now, therefore, be it

Resolved: That the Vice-President and Secretary be, and they are hereby authorized and directed to execute in the name of, and on behalf of, under the seal of this corporation, an agreement with W. S. Bliss in the words and figures following, to-wit:

This Agreement, made and entered into this 11th day of April, 1912, by and between the Carson and Tahoe Lumber and Fluming Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, party of the first part, and W. S. Bliss, of the City and County of San Francisco, State of California, party of the second part,

WITNESSETH:

Whereas, the party of the first part owns certain tracts of land lying on the shores of, and about Lake Tahoe, and located in the States of California and Nevada, and because of the non-productive character of said lands it seems for the best interest of the party of the first part to place the same on the market for sale; and

(Testimony of William S. Bliss.)

Whereas, the party of the second part has already performed valuable services for the party of the first part in connection with said lands, and in preparing for the sale and disposition thereof, for which services he has practically received no compensation; and

Whereas, on account of such services and the intimate knowledge the party of the second part has of said property, it will be to the advantage of the party of the first part to secure the future services of the party of the second part in connection with the sale and disposition of said lands;

Now Therefore, the party of the first part hereby employs the party of the second part to perform services for it in connection with preparations for the sale of said real property, negotiating sales thereof, procuring purchasers ready, willing, and able to purchase the same, either as a whole or in subdivisions, attending to the details of effectuating and closing all sales that may be made, and generally to perform any and all services that may be to the advantage or benefit of the party of the first part in connection with or in any manner relating to the sale of said real property.

This employment shall continue for the period of five (5) years from and after the execution of this agreement, unless all of said lands should be sooner disposed of, or unless the party of the second part should abandon the work of selling or disposing of the same.

(Testimony of William S. Bliss.)

The party of the second part shall receive no compensation for his services to be rendered under this agreement, excepting commissions on the sale of said real property, or subdivisions thereof, which commissions shall be paid as follows:

In case the party of the second part shall succeed in selling said lands as a whole or any subdivision or subdivisions thereof, he shall receive as a commission upon such sale or sales ten (10) per cent of the selling price of the lands sold, such commission, however, to be estimated and paid only upon moneys actually received by the party of the first part upon sales so negotiated by the party of the second part, it being the intention of this agreement that commissions shall only be paid upon money received from contracts for or executed sales, provided, however, that in case during the term of this agreement or before any abandonment thereof by the party of the second part, sales of said property should be made by the party of the first part, or any part thereof, either through its own endeavors or through other parties, the party of the second part shall nevertheless be entitled to his commission upon such sales; and provided further that in case any money should for any reason be refunded by the party of the first part on any sale or contracts the party of the second part shall repay to said first party all commissions theretofore received by him on the amounts refunded.

Said real property shall be sold either as a whole or in sub-divisions set forth and described in the

(Testimony of William S. Bliss.)

schedule hereto annexed, marked "Exhibit A", and specially referred to and made a part of this agreement, and said lands shall be sold for the prices set forth in said schedule, said prices to be net to the party of the first part, excepting that the commission of the party of the second part is to be deducted therefrom. Such prices shall not be changed by the party of the first part without the written consent of the party of the second part, provided, however, that they may be changed at any time by the written consent of stockholders of the party of the first part owning and holding a majority of the shares of the capital stock thereof. In case of any change in such prices, the commissions of the party of the second part shall be estimated upon such changed price, whether increased or reduced.

The party of the second part hereby accepts said employment and agrees to use his best endeavors to sell said real property at the prices designated in said annexed schedule, and to exercise due vigilance in the protection of the interest of the party of the first part in the making and consummation of such sales.

The party of the second part shall not have authority to execute any conveyances of said real property, or any part thereof, or to execute contracts for the sale thereof. All conveyances and contracts shall be executed by the party of the first part through its duly authorized officers.

The party of the first part agrees to furnish for the use of the party of the second part, Abstracts of

(Testimony of William S. Bliss.)

Title of all of said lands, and the party of the second part may use such abstracts in any way he may see fit in connection with the sale and disposition of said lands.

The party of the first part does not warrant its title to any of said lands or any part thereof, and will pay no commissions on any sales that may be negotiated, but which are not consummated through any defect of title, excepting that the second party shall receive commissions on moneys collected as aforesaid, subject to the refunding provision aforesaid.

It Is Understood that the party of the second part contemplates entering into an agreement with the El Dorado Wood and Flume Company, a corporation created, organized and existing under and by virtue of the laws of the State of Nevada; and

It Is The Further Understanding of the parties hereto that any services rendered by the party of the second part to the said El Dorado Wood and Flume Company in connection with the said contemplated agreement shall not be construed in any way to be a breach of this agreement by the said party of the second part.

In the event that the said party of the second part has the opportunity to sell either land of the party of the first part or of the said El Dorado Wood and Flume Company to the same purchaser, then and in that event the said party of the second part shall have the sole right to decide as to which land shall be sold to such purchaser.

(Testimony of William S. Bliss.)

The schedule hereto annexed contains a description not only of the lands of the party of the first part, but also of lands of the El Dorado Wood and Flume Company, and the lands of both said corporations are inter-mingled in said schedule, and in the sub-divisions therein described.

In Witness Whereof, the said party of the first part has hereunto set its hand and seal by its President and Secretary thereunto duly authorized by resolution of the Board of Directors thereof, and the party of the second part has hereunto set his hand the day and year first hereinabove written.

CARSON AND TAHOE LUM-
BER AND FLUMING COM-
PANY

By

President

By

Secretary

The President, Mr. W. S. Bliss, during the consideration of the resolution, having been absent from said meeting, and not having returned, on motion duly made and seconded a recess was taken until the hour of 1:00 o'clock P. M. of this day.

(signed) E. B. YERINGTON

Secretary

[Endorsed]: U.S.B.T.A. Filed June 26, 1941.

(Testimony of William S. Bliss.)

Mr. Helvern: Exhibit 7, the adjourned meeting of the Board of Trustees of the Company authorizing the entering into of an agreement with J. B. Brewster, L. B. Edwards and C. M. Wooster for the purchase by these persons of certain lands of the company, showing a total value as shown by Exhibit A of \$778,500.

Mr. Murray: If the record can show that that is an agreement of an option to purchase instead of a "purchase" as you stated, I am agreeable to it.

Mr. Helvern: That is an option to purchase.

The Member: I think the Exhibit will speak for itself.

Mr. Helvern: Yes, sir. Petitioner's Exhibit 7.

Mr. Murray: No objection.

The Member: Admitted in evidence.

(The minutes of meeting of Board of Trustees so offered and received in evidence was marked Petitioner's Exhibit No. 7 and made a part of this record.)

PETITIONER'S EXHIBIT No. 7

Adjourned meeting of the Board of Trustees of the Carson and Tahoe Lumber and Fluming Company, held at the office of the Company this 11th day of April 1912, at the hour of 1 o'clock P. M.

Present: Trustees W. S. Bliss

E. B. Yerington

J. F. Cannon

The President, W. S. Bliss, occupied the chair.

(Testimony of William S. Bliss.)

On Motion of Trustee Cannon, seconded by Trustee Yerington, the following resolution was unanimously adopted, to-wit:

Whereas, W. S. Bliss, pursuant to authority given him under the agreement of this corporation with him, executed on this day, and pursuant to the authority given by resolution adopted by this Board at its meeting heretofore held on this day, has presented for action by this Board, an option agreement between this corporation as party of the first part, and J. B. Brewster, L. B. Edwards and C. M. Wooster, as parties of the second part, relating to the sale of the real property of this corporation lying on the shores of and in the vicinity of Lake Tahoe; and

Whereas, it appears that it will be for the best interests of this corporation to enter into said option agreement; now, therefore, be it

Resolved: That the President and Secretary be, and they are hereby authorized and directed to make and execute for and on behalf of, and in the name of, and under the seal of this corporation, said option agreement, which is in the words and figures following, to-wit:

“This Agreement, made and entered into this 11th day of April, 1912, by and between the Carson and Tahoe Lumber and Fluming Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, the party of the first part, and J. B. Brewster of the County of Alameda, State of California, and L. B. Edwards

(Testimony of William S. Bliss.)

and C. M. Wooster, both of the City and County of San Francisco, State of California, the parties of the second part,

Witnesseth:

Whereas, the party of the first part owns certain tracts of land lying around Lake Tahoe and located in the States of California and Nevada, all of which real property is hereafter more particularly described; and

Whereas, said party desires to dispose of said lands either as a whole or in sub-divisions; and

Whereas, the parties of the second part desire an option to purchase said lands either as a whole or in sub-divisions as they may elect;

Now Therefore, the party of the first part gives and grants unto the parties of the second part, or to their nominee or nominees, an option to purchase the real property hereinafter described, either as a whole or in sub-divisions for the prices and upon the terms and conditions hereinafter stated.

This option shall continue and be in force for the period of five (5) years from and after the execution of this instrument.

There is attached hereto a schedule which is marked "Exhibit A" and made a part of this agreement. Said schedule sets forth and describes said real property by parcels or sub-divisions numbered 1 to 22, both numbers inclusive, which schedule sets forth the net price for which the party of the first part agrees to grant and transfer its lands under this option. Said schedule also sets forth and de-

(Testimony of William S. Bliss.)

scribes the parcels or sub-divisions which the parties of the second part shall have the right to purchase hereunder. It is understood, however, that all of the land described in said annexed schedule is not the property of the party of the first part. Some of the property described in said parcels or sub-divisions is held or owned by the El Dorado Wood and Flume Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada.

EXHIBIT A

Number	Feet of Shore	Acres	Total Value
1	8250	559	\$27,500
2	3300	2210	58,500
3	3120	1343	14,500
4		3172	25,000
5		2265	23,500
6	1350	1985	16,500
7	4000	1272	23,000
8	4290	1586	32,500
9	2760	1381	28,500
10	9250	2609	68,500
11	4660	2898	38,500
12		4008	26,000
13	2200	6090	57,000
14	3300	2403	32,500
15	8600	242	28,500
16		880	6,500
17	1800	438	25,500
18		480	10,500
19	8600	2576	75,500
20	2000	3350	58,000
21	3100	1975	75,000
22	5300	681	27,000
	<hr/> 75880 <hr/>	<hr/> 44403 <hr/>	<hr/> \$778,500 <hr/>

(Testimony of William S. Bliss.)

The parties of the second part undertake to buy from the party of the first part during the first year after the execution of this option an amount that will yield ten (10) per cent net of the total selling price of the real property of the party of the first part, and said last named corporation, twenty (20) percent thereof during the second year, twenty (20) percent thereof during the third year, twenty (20) percent thereof during the fourth year, and the remainder or thirty (30) percent during the fifth year. Such percentages of the total selling price of said property must be actually paid during said respective years in order to make full compliance with this provision of this option; provided, however, that such payment may be made one half ($1\frac{1}{2}$) in cash, and one half ($1\frac{1}{2}$) in first mortgages on the property sold, said mortgages not to be for more than fifty (50) percent of the net prices specified herein. And provided further, that if the total amount paid to both the party of the first part and the El Dorado Wood and Flume Company during each of said years equals the percentages above named, such payment shall be deemed a full compliance with this provision of this option even if each of said corporations does not receive such percentages year by year.

The parties of the second part further agree to expend not less than Ten Thousand (10,000) Dollars in properly advertising, exploiting and selling said real property, such expenditure to be made during the first year after the execution of this

(Testimony of William S. Bliss.)

option, and said second parties shall furnish to the first party satisfactory evidence of such expenditure for such purpose. In the event that it becomes necessary to expend more than Ten Thousand (10,000) Dollars in advertising, exploiting and selling said property, the party of the first part will lend to the parties of the second part an amount not to exceed fifty (50) percent of the cash actually received by the party of the first part on sales theretofore made, such loan, however, not to exceed in any event the sum of Twenty-five Thousand (25,000) Dollars. Said loan will be evidenced by promissory notes to be satisfactorily secured by the parties of the second part. The hypothecation of all moneys due, owing or payable to the parties of the second part or either of them upon sales that may be made by them to third parties under this option, may be used as security for the repayment of such advances, provided, however, that no greater amount shall be advanced than will be amply secured by such hypothecation.

It is understood and agreed that this option is given in consideration of the aforesaid agreements and stipulations on the part of the parties of the second part, and that in the event of the failure of the parties of the second part or either of them to perform or carry out all of said agreements and stipulations, then this option shall lapse and become void, and of no force and effect, and all rights of the parties of the second part or either of them thereunder shall immediately cease.

(Testimony of William S. Bliss.)

The party of the first part agrees that it will execute deeds of conveyance of all of said real property owned by it or of all sub-divisions thereof owned by it, said deeds to be made either to the parties of the second part or their nominees in writing upon receiving the full purchase price of the property so sold and transferred as hereinabove provided. The party of the first part will also make, execute and deliver written contracts of sale of said real property or any sub-division or sub-divisions thereof, either to the parties of the second part or to their nominees in writing, retaining the title thereto in the present holder thereof until full payment is made therefor, such contracts to contain such terms, conditions and provisions as shall be satisfactory to the party of the first part.

It is understood and agreed that the party of the first part does not make any representation or warranty with respect to its title to any of said real property. If any of said property or any part thereof should be sold to the parties of the second part or to either of them or to their nominee or nominees, such purchaser or purchasers shall take the title to said property and to each and every part thereof as they find it, and in the event that it should develop that the title to any of said property is defective, the party of the first part shall have six (6) months time within which to cure said defect, and to make said title satisfactory to the purchaser or purchasers. If in any case said title should not be made satisfactory to the purchaser

(Testimony of William S. Bliss.)

or purchasers, they or either of them may either take said title in its defective condition, receiving a quit-claim deed therefor from the party of the first part, or may drop from the sale or sales, such part of said property as may be affected by said defect of title at such price as may be mutually satisfactory, or may rescind said sale; provided, that no sale shall be rescinded after deeds of conveyances are delivered.

The parties of the second part shall not be entitled to purchase any part or portion of, or less than the whole of any parcel or sub-division of said real property unless such part should be dropped therefrom by reason of defect of title as hereinabove provided, unless agreed to in writing by the party of the first part.

Annexed hereto and made a part of this option is a map or print showing a sufficient description of all of said property and the parcels or sub-divisions described in "Exhibit A" attached hereto; said map or print is marked "Exhibit B" and made a part of this option, and said schedule annexed hereto and marked "Exhibit A" shall be construed in connection with said "Exhibit B" for the purpose of identifying and obtaining correct and accurate descriptions of the property covered by this option.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, said Carson and Tahoe Lumber and Fluming Company by its president and secretary thereunto duly authorized, the day and year first hereinabove written.

(Testimony of William S. Bliss.)

No further business appearing before the Board, the same adjourned.

(signed) W. S. BLISS

President

(signed) E. B. YERINGTON

Secretary

[Endorsed]: U.S.B.T.A. Filed June 25, 1941.

The Member: I take it that counsel for Respondent by making no objection has, in effect, stipulated that these [75] minutes are what they purport to be.

Mr. Murray: Exactly. And I have checked them.

The Member: Because I call counsel's attention to the fact that the witness has not identified a single exhibit. They have been adequately identified by counsel, but not by this witness. But if Respondent makes no objection, that is to be considered as a stipulation that the statements are what they purport to be and they will go in the record as such.

Mr. Murray: Yes. I agree to that.

Mr. Helvern: Subject to a later check as to the details on this map by Government counsel, I submit as Petitioner's Exhibit 8 a map of Lake Tahoe and the land in the vicinity of Lake Tahoe.

The Member: That Exhibit has been adequately identified by the witness. Do you object to the introduction in evidence of this Exhibit?

(Testimony of William S. Bliss.)

Mr. Murray: No. I don't object to that.

The Member: It will be admitted in evidence.

(The map so offered and received in evidence was marked Petitioner's Exhibit No. 8, and made a part of this record.)

Mr. Helvern: This is Exhibit 8, which is identified as being a map of the lands included in the appraisal of W. S. Bliss, with the various parcels identified by block numbers enclosed in black lines. [76]

The Member: All right. Proceed.

Q. (By Mr. Helvern) Mr. Bliss, I hand you a paper indicated as being Exhibit 9. Will you please identify that and tell us what that paper is?

A. Well, it is a letter from Wooster that I received on an extension of time.

Q. Yes. You have identified it as being a letter from Mr. Wooster. The date?

A. April 5, 1913 after his first option expired.

Q. Yes. This letter which you state is from Mr. Wooster is signed C. M. Wooster? A. Yes.

Mr. Helvern: I submit this as Petitioner's Exhibit 9, a letter from C. M. Wooster of C. M. Wooster Company.

The Member: No objection?

Mr. Helvern: Dated April 5.

The Member: No objection?

Mr. Murray: No objection.

The Member: Accepted in evidence.

(Testimony of William S. Bliss.)

(The letter so offered and received in evidence was marked Petitioner's Exhibit No. 9 and made a part of this record.)

Q. (By Mr. Helvern) Mr. Bliss, you stated in this letter that Mr. Wooster asked for an extension of time. Do you recall the length of time he wanted an extension for? [77]

A. Well, he wanted more than we gave him. We gave him a month.

Q. How much did he want?

A. Well, I think he wanted a year.

Q. Does the——

A. (Interposing) I don't know whether it says so or not.

Q. I will see if it says a year. I believe it does. Check to see if that is the extension. Would you mind reading the portion that asks for the extension? Mr. Bliss would you read this paragraph of the letter to indicate what his reasons were for asking for an extension?

A. "I regret that nothing materially has been accomplished under the option. Diligent effort has been made but last year was one of liquidation generally throughout this country. It was characterized by conservatism in all branches of business, causing a peculiar money stringency and rendering impossible the floating of a project such as this, one appealing more to the luxuries than the necessity.

"It was a Presidential year, whose results brought a change; whether for ultimate good or evil, the

(Testimony of William S. Bliss.)

change caused a general depression in financial affairs.

“We had a number of strong and influential men of affairs from Southern California over the ground and made every possible effort to bring about successful negotiations with this, but the atmosphere of the times was against this. [78]

“I have had negotiations with some people of ample means to take over the project, but about the time they were ready to proceed in the matter, the money trust investigation gave further excuses for conservative methods.

“I have been disappointed in my own efforts, yet I believe it would have been impossible for anyone to have accomplished the sale of the lands during the past year. I believe it best to proceed on the lines of selling individual tracts and if the company will renew the option, we will undertake the last named plan and certainly we can do more than strangers to the project, and I ask that you request a renewal of the option in our behalf and I will give it more earnest effort. Negotiations under way, in which I have faith, warrant this request.”

Q. Yes. He asked for a one-year renewal?

A. As I remember it, it was a year.

Q. Yes. A. We gave them a month.

Q. You gave him how much?

A. One month, I think.

Q. What happened after the month expired?

A. We canceled it.

(Testimony of William S. Bliss.)

Q. No further agreement with Mr. Wooster or his associate? A. No, no further agreement.

Q. Mr. Bliss, I hand you a paper marked as Exhibit 10. Tell [79] us what that paper indicates, briefly?

A. Do you want me to read it?

Q. No. Just what is that paper?

A. (No response)

Mr. Helvern: With the permission of counsel I would like to help the witness.

Q. (By Mr. Helvern) That paper is merely an extension of one month's time to Brewster?

A. It says here "Resolved: That the option heretofore given to C. M. Wooster & Co. be and the same is hereby extended for the period of thirty days, to expire on the 11th day of May next."

The Member: Is that a copy of the minutes of the Board of Directors?

Mr. Murray: Yes. I will so stipulate.

Mr. Helvern: Meeting of the Trustees.

The Member: All right. Do you offer it in evidence?

Mr. Helvern: I offer that in evidence as Petitioner's No. 10.

The Member: There is no objection?

Mr. Murray: No objection.

The Member: Accepted in evidence.

(The copy of option so offered and received in evidence was marked Petitioner's Exhibit No. 10 and made a part of this record.) [80]

(Testimony of William S. Bliss.)

PETITIONER'S EXHIBIT No. 10

Meeting of Trustees

April 7th, 1913

At a meeting of the Board of Trustees of the Carson & Tahoe Lumber & Fluming Company, held at the office of the company, in the City of Carson, Nevada, this day, Messrs. W. S. Bliss, Jno. F. Cannon and E. B. Yerington, constituting the Board were present.

Trustee W. S. Bliss in the Chair

Trustee E. B. Yerington acting as Secretary

Motion made and seconded that election of officers be proceeded with.

Mr. W. S. Bliss nominated as President

Mr. Jno. F. Cannon nominated as Vice President

Mr. E. B. Yerington nominaed as Secretary

Bank of California nominated as Depository

No further nominations having been made, the gentlemen were duly declared elected to the several offices to serve until their successors shall have been duly elected and qualified.

Messrs. C. M. Wooster & Co., holding option on lands of the company in the vicinity of Lake Tahoe, which option expires April 11th, addressed a communication to the company asking for an extension of time on the option.

On motion, duly seconded, it was

Resolved: That the option heretofore given to C. M. Wooster & Co., be and the same is hereby extended for the period of thirty (30) days, to expire

(Testimony of William S. Bliss.)

on the 11th day of May next.

No further business appearing, the meeting on motion adjourned.

(signed) E. B. YERINGTON

Secretary

(signed) W. S. BLISS

President

[Endorsed]: U.S.B.T.A. Filed June 25, 1941.

The Member: Mr. Helvern for the purpose of taking up another matter just for a few moments, I am going to declare a recess in this case. We will convene in just a moment.

(Here followed short interruption.)

The Member: All right, gentlemen. We will go back to the Bliss case.

Q. (By Mr. Helvern) Mr. Bliss, I hand you a map. I would like to have you describe that map. Just briefly, what is it?

A. Why, it gives the sales, it gives the dates, acreage feet of shore, and amount received for different pieces of land.

Q. Sales made by whom, Mr. Bliss?

A. By the company and by others.

Q. Are you sure there are any sales made by others on there? Identify that. I don't think so.

A. I don't think that there are any by others on here.

Mr. Murray: If your Honor please I won't ob-

(Testimony of William S. Bliss.)

ject to this map going in if I may have the privilege of checking it later, if Mr. Bliss is not clear what is on there.

Mr. Helvern: All right. For the saving of time, this is a map, as stated by the witness, showing sales made by the company of lands in the vicinity of Lake Tahoe, lands owned by Petitioner. [81]

The Member: Where does it show the sales that are made?

The Witness: This is another map.

The Member: Oh, is this another map?

Mr. Helvern: Yes. This map is the same blue-print outlined in black.

The Member: Oh, I see.

Mr. Helvern: And the description contains the sales made by the company.

The Member: I see. And you want to check this?

Mr. Murray: Yes, if your Honor please. I have a map myself that I want to ask the same thing, with your indulgence, and we will check both maps later, if it suits your Honor.

The Member: All right.

Mr. Helvern: These maps will be made available to other counsel. When the clerk returns I will put in all the Exhibits, with the consent of Government counsel.

The Member: All right. Fine!

The Witness: This just shows the land and the other map shows the sales.

The Member: Yes.

Q. (By Mr. Helvern) Mr. Bliss, you have stated

(Testimony of William S. Bliss.)

that you entered into an agreement with the company to sell all of its lands in the vicinity of Lake Tahoe? A. Yes. [82]

Q. Generally for the prices stated in this appraisal of yours? A. Yes, sir.

Q. That is true. And this was your own appraisal? A. Yes, sir.

Q. What experience did you have in appraising lands or determining the value of lands in the vicinity of Lake Tahoe, such lands as you did then appraise?

A. I went to Tahoe in '69 and went there every year afterwards. So I saw these lands and surveyed it and had a general idea of things; heard of some sales being made and just formed an idea from different things that those were the prices, the values.

Q. Yes. Thinking of Lake Tahoe, this land, constituting 44,000-odd acres and a large frontage on Lake Tahoe, constituted in your opinion what percentage of the total land in the near vicinity of Lake Tahoe and on the shore frontage of the whole lake? What percentage would you say was owned by your company? A. You mean Tahoe Basin?

Q. Yes. Would you say it was twenty per cent or fifty per cent?

A. Tahoe Basin had 519 square miles.

Q. I refer to land with frontage on Lake Tahoe.

A. There was about a hundred miles around the lake. [83]

Q. Anyhow, Mr. Bliss, this land constituted a

(Testimony of William S. Bliss.)

very large percentage of all the land with a frontage on lake Tahoe?

A. Yes, the largest holdings there.

Q. Is it true that on the Nevada side they held nearly all the lake frontage? A. Yes.

Mr. Helvern: Nearly all of it.

I submit that Petitioner's Exhibit, with the consent of Government counsel, Exhibits Nos.—I have a complete description of these exhibits which I am handing to the clerk and which we will identify later—Exhibits 11, 12, 13, 14, 15, 16, 17 and 18.

The Member: No objection?

Mr. Murray: No objection.

The Member: Accepted in evidence.

(The documents so offered and received in evidence were marked Petitioner's Exhibits Nos. 11 to 18 inclusive and made a part of this record.)

PETITIONER'S EXHIBIT No. 11

Special Meeting of the Board of Trustees of Carson and Tahoe Lumber and Fluming Company, September 24th, 1913.

Pursuant to notice duly given, a Special Meeting of the Board of Trustees of the Carson and Tahoe Lumber and Fluming Company was held at the office of the Company, Carson City, Nevada, on the 24th day of September, 1913, at the hour of 10:30 o'clock A. M., at which a quorum was present.

On motion, duly made and seconded, the following resolution was unanimously adopted, to-wit:

(Testimony of William S. Bliss.)

Whereas, W. S. Bliss, President of this Company, has presented for action by this Board, an option agreement between this Corporation, as party of the first part, and William Ferdinand Detert, as party of the second part, covering real property owned by this corporation, and it appearing that it will be for the best interests of this corporation to enter into said option agreement, now, therefore, be it

Resolved: That the President and Secretary be, and they are hereby authorized and directed to make and execute for and on behalf of, in the name of, and under the seal of this corporation, said option agreement, in the words and figures following, to-wit:

“This Indenture, made the 24th day of September 1913 by and between Carson and Tahoe Lumber and Fluming Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, the party of the first part, and William Ferdinand Detert, of the City of Jackson, County of Amador, State of California, the party of the second part,

Witnesseth:

For and in consideration of the sum of One Dollar to it in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, and for other good and valuable consideration it hereunto moving, the party of the first part hereby gives and grants unto the party of the second part an exclusive option and right to purchase for the

(Testimony of William S. Bliss.)

period of ninety days from the date hereof, for the sum of Twenty-six thousand, one hundred, sixty dollars (\$26,160.00) in lawful money of the United States of America, the following described real property situate, lying and being in the County of Douglas, State of Nevada, more particularly described as follows, to-wit:

Lot Two (2) in Section Nine (9), containing Thirty-four and Twenty-one-hundredths (34.20) acres, South half of South half of Section Ten (10), containing One Hundred Sixty (160) acres, all of Section Thirteen (13), containing Six Hundred Forty (640) acres, North half, Southwest quarter, North half of Southeast quarter, Southwest quarter of Southeast quarter, of Section Fourteen (14), containing Six Hundred (600) acres, East half of Section Fifteen (15), containing Three Hundred and Twenty (320) acres, Lot One (1) of Section Twenty-one (21), containing Two and Thirty-one-one-hundredths (2.31) acres; Lots One (1) and Two (2) of Section Twenty-two (22), containing Sixty-one and Sixty-eight one-hundredths (61.68) acres, West half of Northeast quarter, Northeast quarter of Northwest quarter, Northwest quarter of Southeast quarter, of Section Twenty-three (23), containing One Hundred and Sixty (160) acres, North half of Northeast quarter, Northwest quarter, and Northwest $\frac{1}{4}$ of Southwest quarter of Section Twenty-four (24) containing Two Hundred and Eighty (280) acres, containing in all Two Thousand, Two Hundred Fifty-eight and Nineteen One-Hundredths

(Testimony of William S. Bliss.)

(2,258.19) acres more or less, all in Township Number Thirteen (13) North, Range Eighteen (18) East, Mount Diablo Base and Meridan;

It being understood that said option may be exercised by the party of the second part by paying to the credit of the party of the first part at any time within said Ninety days the above named sum of Twenty-six Thousand, One Hundred and Sixty Dollars (\$26,160.00) in lawful money of the United States at the Mercantile National Bank of San Francisco, 464 California Street, San Francisco, California.

There is excepted from the provisions of this Option however, the rights of Lewis I. Cowgill under the provisions of that certain agreement between the party of the first part herein and him, allowing and permitting him to erect upon the N. E. $\frac{1}{4}$ of Section 15, T. 13 N., R. 18 E., Mt. Diablo Base & Meridian, and maintain for the period of twenty-five years a dam, tank or reservoir for the purposes set forth in said agreement.

In Witness Whereof, the party of the first part has caused these presents to be subscribed by its President and Secretary, thereunto duly authorized by resolution adopted at a duly called meeting of its Board of Trustees at which a quorum was present and acting, as the act and deed of said corporation,

(Testimony of William S. Bliss.)

and its corporate seal to be affixed thereto, the day and year herein first above written.

CARSON AND TAHOE LUM-
BER AND FLUMING COM-
PANY

By

Its President,

And by

Its Secretary.”

On motion, duly made and seconded, the following resolution was unanimously adopted, to-wit:

Resolved: That the President and Secretary be, and they are hereby authorized and directed to execute in the name of, on behalf of, and under the seal of this Corporation, a Lease to William Ferdinand Detert, upon the terms and conditions in words and figures following, to-wit:

“This Agreement, made and entered into the 24th day of September, 1913, by and between the Carson and Tahoe Lumber and Fluming Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, lessor, and William Ferdinand Detert, of the City of Jackson, County of Amador, State of California, lessee.

Witnesseth: That said lessor hereby leases to said lessee a right of way and easement of the width of fifty feet over and across that portion of the following lands belonging to said lessor, to-wit: over and across sections thirteen, fourteen, fifteen, twenty-two, twenty-three and twenty-four, township 13

(Testimony of William S. Bliss.)

north, of range 18 east, Mount Diablo Base and Meridian, for logging purposes, whether by logging-trucks, chutes, or otherwise, together with a log landing, to be chosen by the lessee, five hundred feet in width along the shore where said section 22 abuts on the Easterly shore of Lake Tahoe, extending backward on Lots 1 and 2, or lot 1 or 2, of said section 22, as far eastward as may be actually necessary for the logging operations of said lessee, for the period of fifteen years from the date hereof, at the yearly rental of one dollar per year, payable only upon demand of said lessor, which said rental said lessee hereby promises to pay upon such demand.

And it is agreed that said lessee shall have no right to cut or deface any timber standing upon said portion of said log-landing lying back of said shore, but shall have the right to cut any timber necessary to clear said right of way or easement fifty feet wide; provided, however, that for any fir so cut said lessee shall pay stumpage at the rate of one dollar per thousand feet, and for any pine so cut said lessee shall pay stumpage at the rate of two and one-half dollars per thousand feet of merchantable lumber; and provided, further, that said lessee shall be entitled to only one such right of way or easement fifty feet wide, and shall not have the right after he shall have elected and cut out one such right of way to elect or cut out another.

It is further agreed that in case said lessee shall complete, or cease and abandon logging operations upon land owned by him, so that he shall finish or

(Testimony of William S. Bliss.)

cease and abandon using said right of way and easement before the expiration of this lease, as hereinbefore specified, then this lease shall cease and determine, and the right of possession of said right of way and easement hereby leased shall thereupon revert to said lessor, and a failure of said lessee to use said right of way and easement for logging purposes for two successive years shall be deemed to constitute an abandonment of the same within the meaning of this provision.

In Witness Whereof, said lessor, by resolution duly adopted at a meeting of its Board of Trustees at which a quorum was present and acting, has caused these presents to be subscribed by its President and Secretary, and its corporate seal to be attached thereto, in duplicate, and said lessee has hereunto set his hand and seal, the day and year herein first above written.

CARSON AND TAHOE LUM-
BER AND FLUMING COM-
PANY

By

Its President

and by

Its Secretary

Lessor

.....

Lessee''

On motion, duly made and seconded, the following resolution was unanimously adopted, to-wit:

Resolved: That the President and Secretary be,

(Testimony of William S. Bliss.)

and they are hereby authorized and directed to execute in the name of, on behalf of, and under the seal of this Corporation, and as its act and deed, a Deed to William Ferdinand Detert (unmarried) of the City of Jackson, County of Amador, State of California, in words and figures following, to-wit:

“This Indenture, made and entered into the 24th day of September, 1913, by and between Carson and Tahoe Lumber and Fluming Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, the party of the first part, and William Ferdinand Detert, (unmarried) of the City of Jackson, County of Amador, State of California, the party of the second part,

Witnesseth: That said party of the first part for and in consideration of the sum of Ten Dollars (\$10.00), lawful money of the United States of America, to it in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, the party of the first part hereby grants, bargains, sells and conveys forever, all that certain land situate, lying and being in the County of Douglas, State of Nevada, more particularly described as follows, to-wit:

All of Section Twenty-five (25) in Township Thirteen (13) North, Range Eighteen (18) East, Mount Diablo Base and Meridian, containing Six Hundred and Forty (640) acres, more or less;

Together With, All and Singular, the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion

(Testimony of William S. Bliss.)

and reversions, remainder and remainders, rents, issues and profits thereof;

To Have and to Hold, All and Singular, the said premises, together with the appurtenances, unto the party of the second part, his heirs and assigns forever.

In Witness Whereof, the party of the first part has caused these presents to be subscribed by its President and Secretary, thereunto duly authorized by resolution adopted at a duly called meeting of its Board of Trustees at which a quorum was present and acting, as the act and deed of said corporation, and its corporate seal to be affixed thereto, the day and year herein first above written.

CARSON AND TAHOE LUM-
BER AND FLUMING COM-
PANY,

By
Its President

And by.....
Its Secretary''

No further business appearing, upon motion, duly made and seconded, the meeting adjourned.

(signed) E. B. YERINGTON

Secretary

(signed) W. S. BLISS

President

[Endorsed]: U. S. B. T. A. Filed June 25, 1941.

(Testimony of William S. Bliss.)

PETITIONER'S EXHIBIT No. 15

CARSON AND TAHOE LUMBER AND FLUMING COMPANY

Petitioner's claimed fair value of land in Nevada and California
in the vicinity of Lake Tahoe as of March 1, 1913, and disposition thereof

Block No.	Acres	Lake Tahoe shore frontage feet	Disposition or explanation	Claimed fair value March 1, 1913			Sale Price
				Per acre	Per shore front foot	Total	
1	559	8,250	Owned 3/1/13. Value as appraised by W. S. Bliss....	\$10.00	\$2.50	\$27,500	
	40		Acquired by quiet title decree 1920.....			400	
	599	8,250				27,900	
	599	8,250	Distributed to stockholders 2/25/28.....			27,900	
2	2,210	3,300	Owned 3/1/13. Value as appraised by W. S. Bliss....	10.00	5.00	58,500	
	396	6,000	Acquired by quiet title decree 1920, net.....			34,200	
	2,606	9,300				92,700	
	42 $\frac{3}{8}$	800	Sold to E. G. Schmeidel 1921.....			3,563	\$3,563.00
	2,601 $\frac{1}{8}$	8,500				89,137	
	922		Sold to Chas. L. Fulstone 1922.....			5,993	5,301.50
	1,679 $\frac{1}{8}$	8,500				83,144	
	1,679 $\frac{1}{8}$	8,500	Distributed to stockholders 2/25/28.....			83,144	
3	1,343	3,120	Owned 3/1/13. Value as appraised by W. S. Bliss....	5.00	2.50	14,500	
	292	2,730	Acquired by quiet title decree 1920.....			8,285	
	1,635	5,850				22,785	
	1,160		Sold to Chas. L. Fulstone 1/2/20.....			5,800	4,965.00
	475	5,850				16,985	
	475	5,850	Distributed to stockholders 2/25/28.....			16,985	
4	3,172		Owned 3/1/13. Value as appraised by W. S. Bliss....	8.00	2.50	25,000	
	25	3,500	Lost by quiet title decree 1920, net..... (gained shore footage)			8,550	
	3,147	3,500				33,550	
	1,634		Sold to Chas. L. Fulstone 1/2/20.....			13,072	11,089.00
	1,513	3,500				20,478	
	802	3,500	Distributed to stockholders 2/25/28.....			14,790	
	711					5,688	
	711		Sold Jan. 1938 to Geo. Whittell.....			5,688	
5	2,265		Owned 3/1/13. Value as appraised by W. S. Bliss....	10.44		23,500	
	40		Lost by quiet title decree 1920.....			400	
	2,225					23,100	
	120		Sold to Glenbrook Improvement Co. 1924.....			2,175	2,600.00
	2,105					20,925	
	1,080		Distributed to stockholders 2/25/28.....			10,675	
	1,025					10,250	
	1,025		Sold Jan. 1938 to Geo. Whittell.....			10,250	

(Testimony of William S. Bliss.)

Petitioner's Exhibit No. 15—(Continued)

Block No.	Acres	Lake Tahoe shore frontage feet	Disposition or explanation	Claimed fair value March 1, 1913			Sale Price
				Per acre	Per shore front foot	Total	
6	1,985	1,350	Owned 3/1/13. Value as appraised by W. S. Bliss....	\$6.50	\$3.00	\$16,500	
	164		Land owned—omitted from appraisal of W. S. Bliss			1,520	
	2,149	1,350				18,020	
	80		Sold to M. and R. Bigot 4/19/17.....			1,000	
	2,069	1,350				17,020	
	40		Lost by quiet title decree 1920.....			260	
	2,029	1,350				16,760	
	640		Distributed to stockholders 2/25/28.....			3,681	
7	1,389	1,350		9.00	3.00	13,079	
	1,389	1,350	Sold Jan. 1938 to Geo. Whittell.....			13,079	
	1,272	4,000	Owned 3/1/13. Value as appraised by W. S. Bliss....			23,000	
	200		Acquired by quiet title decree 1920.....			1,700	
	1,472	4,000				24,700	
	80	1,350	Sold to R. de Longchamps 7/11/29.....			5,788 } 39 }	
	6		do				
	1,386	2,650				18,873	
8	1,386	2,650	Sold Jan. 1938 to Geo. Whittell.....	8.80	4.35	18,873	
	1,586	4,290	Owned 3/1/13. Value as appraised by W. S. Bliss			32,500	
	27	1,320	Sold July 1926 to George Malley.....			7,416	
	1,559	2,970				25,084	
	88	1,240	Sold 6/4/28 to R. de Longchamps.....			8,710	
	1,471	1,730				16,374	
	1,471	1,730	Sold Jan. 1938 to Geo. Whittell.....			16,374	
9	1,381	2,760	Owned 3/1/13. Value as appraised by W. S. Bliss....	11.45	5.00	28,500	9,000.00*
	416	2,760	Sold 11/1/23 to C. L. Fulstone.....			18,850	
	965					9,650	
	965		Sold Jan. 1938 to Geo. Whittell.....			9,650	
10	2,609	9,250	Owned 3/1/13. Value as appraised by W. S. Bliss....	8.65	5.00	68,500	2,500.00
	37	2,000	Sold 6/27/22 to R. A. Hardy.....			3,110	
	2,572	7,250				65,390	
	76	1,000	Sold Nov. 1924 to C. L. Fulstone.....			6,930	
	2,496	6,250				58,460	
	2,496	6,250	Sold January 1938 to Geo. Whittell.....			58,460	

*Also received consideration of advertising.
Land resold for \$18,000.

(Testimony of William S. Bliss.)

Petitioner's Exhibit No. 15—(Continued)

Block No.	Acres	Lake Tahoe shore frontage feet	Disposition or explanation	Claimed fair value March 1, 1913			Sale Price
				Per acre	Per shore front foot	Total	
11	2,898	4,660	Owned 3/1/13. Value as appraised by W. S. Bliss....	\$6.90	\$4.00	\$38,500	
	10		Acreage omitted from appraisal.....			60	
	2,908	4,660				38,560	
	640		Sold 9/24/13 to W. F. Detert ✓.....			3,840	\$3,840.00
	2,268	4,660				34,720	
	40		Sold 5/14/19 to G. R. Cowgill ✓.....			240	240.00
	2,228	4,660				34,480	
	40		Sold 10/1/20 to Norman de Vaux ✓.....			240	400.00
	2,188	4,660				34,240	
	44	2,000	Sold 10/23/24 to Norman de Vaux.....			9,200	3,000.00
	2,144	2,660				25,040	
	80		Sold 11/3/24 to C. L. Fulstone.....			480	240.00
	2,064	2,660				24,560	
	320		Sold July 1931 to Arthur K. Bourne.....			1,920	3,200.00
12	1,744	2,660				22,640	
	1,744	2,660	Sold Jan. 1938 to Geo. Whittell.....			22,640	
	4,008		Value as appraised by W. S. Bliss.....	6.50		26,000	
	2,684		Deduct land of El Dorado Wood & Flume Co. included			17,393	
	1,324		Owned 3/1/13 at value as appraised by W. S. Bliss	6.50		8,607	
	444		Sold 3/1/17 to A. L. Dressler.....			2,886	2,215.75
	880					5,721	
	160		Lost by quiet title decree 1920.....			1,040	
	720					4,681	
	40		Distributed to stockholders 2/25/28.....			260	
	680					4,421	
	680		Sold 1938 to U. S. Government.....			4,421	

(Testimony of William S. Bliss.)

Petitioner's Exhibit No. 15—(Continued)

Block No.	Acres	Lake Tahoe	Disposition or explanation	Claimed fair value March 1, 1913			Sale Price
		shore frontage feet		Per acre	Per shore front foot	Total	
13	6,090	2,200	Value as appraised by W. S. Bliss.....	\$9.00	\$1.00	\$57,000	
	398		Land owned but not included in appraisal.....			3,592	
	6,488					60,592	
	4,579		Deduct land of El Dorado Wood & Flume Co.included			41,211	
	1,909	2,200	Owned 3/1/13 at value as appraised by W. S. Bliss			19,381	
	40		Acquired by quiet title decree 1920, net.....			360	
	1,949	2,200				19,741	
	509	2,200	Sold 7/21/22 to John E. Dunlap.....			6,781	\$6,527.00
	1,440					12,960	
	80		Sold 7/25/22 to W. D. Barton.....			1,000	1,000.00
	1,360					11,960	
	280		Sold 1/15/26 to W. D. Barton.....			2,520	3,500.00
	1,080					9,440	
	80		Sold March 1931 to Geo. O. Kyburz.....			720	700.00
14	1,000					8,720	
	960		Sold 1938 to U. S. Government.....			8,360	
	40		Balance owned 12/31/38.....			360	
	2,403	3,300	Value as appraised by W. S. Bliss.....	12.50	1.00	32,500	
	508		Land owned but not included in appraisal.....			6,350	
	2,911	3,300				38,850	
	392	1,900	Deduct land of El Dorado Wood & Flume Co.included			5,963	
	2,519	1,400	Owned 3/1/13 at value as appraised by W. S. Bliss			32,887	
	808		Sold March 1919 to J. C. Scott.....			10,100	10,000.00
	1,711	1,400				22,787	
	80		Acquired by quiet title decree 1920.....			1,000	
	1,791	1,400				23,787	
	120		Sold March 1922 to C. G. Celio.....			1,500	1,500.00
	1,671	1,400				22,287	
991	1,400	Sold 7/21/22 to John E. Dunlap.....			13,787	13,453.00	
680					8,500		
80		Sold March 1931 to Geo. Kyburz.....			1,000	\$80.00	
600					7,500		
600		Sold 1938 to U. S. Government.....			7,500		

(Testimony of William S. Bliss.)

Petitioner's Exhibit No. 15—(Continued)

Block No.	Acres	Lake Tahoo shore frontage feet	Disposition or explanation	Claimed fair value March 1, 1913			Sale Price
				Per acre	Per shore front foot	Total	
15	242	8,600	Owned 3/1/13. Value as appraised by W. S. Bliss....	\$30.17	\$25.00	\$28,500	
	80		Sold Nov. 1921 to G. A. Newhall.....			800	\$1,000.00
	162	8,600				27,700	
	162	8,600	Distributed to stockholders 2/25/28.....			27,700	
16	880		Owned 3/1/13. Value as appraised by W. S. Bliss....	7.50	1.00	6,500	
		5,000	Add for value of shoreline omitted from appraisal			5,100	
	880	5,000				11,600	
	800	5,000	Sold 9/1/29 to D. H. Chambers.....			11,000	10,000.00
	80		Balance owned 12/31/38.....			600	
17	438	1,800	Owned 3/1/13. Value as appraised by W. S. Bliss....	17.42	10.00	25,500	
	160		Lost by quiet title decree 1920.....			1,600	
	278	1,800				23,900	
	118	1,800	Sold 6/5/28 to R. Kerman, Jr. and F. R. Short.....			22,430	25,000.00
	160		Balance owned 12/31/38.....			1,470	
18	480		Owned 3/1/13. Value as appraised by W. S. Bliss.... (incl. water rights)	20.00		10,500	
	480		Owned 12/31/38.....			10,500	
19	2,576	8,600	Owned 3/1/13. Value as appraised by W. S. Bliss....	12.50	5.12	75,500	
	2,576	8,600	Sold Jan. 1917 to Lora J. Moore.....			75,500	65,000.00
20	3,350	2,000	Owned 3/1/13. Value as appraised by W. S. Bliss....	12.47	7.50	58,000	
	3,040		Sold August 1923 to Crown Willamette Paper Co.....	12.50		38,000	34,540.00
	310	2,000				20,000	
	310	2,000	Sold October 1935 to F. A. Kilner.....			20,000	17,000.00
21	1,975	3,100	Owned 3/1/13. Value as appraised by W. S. Bliss....	22.00	10.00	75,000	
	1,360		Sold August 1923 to Crown Willamette Paper Co.....	12.50		17,000	15,675.00
	615	3,100	Balance owned 12/31/38.....	42.92		58,000	

(Testimony of William S. Bliss.)

Petitioner's Exhibit No. 15—(Continued)

Block No.	Acres	Lake Tahoe shore frontage feet	Disposition or explanation	Claimed fair value March 1, 1913			Sale Price
				Per acre	Per shore front foot	Total	
22	681	5,300	Owned 3/1/13. Value as appraised by W. S. Bliss....	\$10.00	\$25.00	\$27,000	
	63		Acquired by quiet title decree 1920.....			630	
	744	5,300				27,630	
	558		Sold August 1923 to Crown Willamette Paper Co.....			5,580	\$4,785.00
	186	5,300				22,050	
	40	1,325	Sold 1/7/28 to Lora J. Knight.....			3,713	10,000.00
	146	3,975				18,337	
	146	3,975	Distributed to stockholders 2/25/28.....			18,337	

[Endorsed]: U.S.B.T.A. Filed June 25, 1941.

(Testimony of William S. Bliss.)

Q. (By Mr. Helvern) Then, when you valued this land, Mr. Bliss, you thought you were pretty well experienced with the valuation of land?

A. Yes, sir.

Q. Did you know anything about what the company was selling its land for and had heretofore sold its land for? What prices? Were you familiar with that? [84]

A. Before I came in?

Q. Yes.

A. Yes. They were sold very cheap. All lands around the lake were very cheap, and I looked the thing over and decided that it wasn't enough and put these prices on.

Q. You did put these prices on?

A. From what I found out.

Q. You say from what you found out?

A. Yes.

Q. Did you make it a point to try and find out what prices should be put on the land?

A. Well, I inquired around.

Q. Yes.

A. Or heard of prices of sales.

Q. And did you devote considerable time and attention and hard work to making this, or didn't you? Did you just do it in a cursory manner?

A. All my time.

Q. All your time in making the appraisals. Did you know other land owners around Lake Tahoe?

A. Yes.

(Testimony of William S. Bliss.)

Q. And you were familiar with their lands. And were you familiar to any extent with the selling prices obtained by them for their lands?

A. I don't remember 30 or 40 years back. [85]

Q. You don't remember now. Mr. Bliss, then in your opinion this appraisal made by you was correct at the time? A. Yes, sir.

Mr. Murray: If your Honor please, I will have to ask that the witness not be led so much.

The Member: Yes. I would like to urge counsel not to do that, too, any more than is necessary.

Mr. Helvern: All right.

Q. (By Mr. Helvern) Mr. Bliss, you have stated that the company had no source of income after it ceased logging off its land in 1898 and after it sold certain of its property, it had no source of income except land sales. A. That's right.

Q. Did it have any particular expenses?

A. Lots of expenses.

Q. What sort of expenses?

A. Well, I went back to Washington to save the lake—to save it from draining.

Q. Draining?

A. Stone & Webster and the Reclamation Service were going to drain that lake a hundred feet, someone told me, and that cost considerable money and took a man with me, and then——

The Member: (Interposing) What was the idea of draining it?

The Witness: Oh, they were going to take it

(Testimony of William S. Bliss.)

into [86] Washoe Valley and get a thousand feet fall and use the water in Nevada. But the fact of the matter was that they were going to take it into Rubicon and get six thousand feet of fall, so I found out. Stone & Webster do the work and get the power, and the Reclamation Service was to use it, and very likely come into the Central Valley now.

Q. (By Mr. Helvern) They did not accomplish that purpose? A. No, they didn't.

Q. When did this occur? What year?

A. Well, it started away back in 1902 or '3, I think. But I didn't take hold of it at that time.

Q. What other expenses did they have besides paying these expenses?

A. Taxes, and we had declared some assessments once in a while. Some of the stockholders were awfully hard up.

Q. The stockholders were what?

A. Hard up.

Q. Very hard up.

A. They were coming at me for dividends.

Q. But you had no money for dividends?

A. No, except from the sale of the land.

Q. Well, what did they do to raise money?

A. Sold the land.

Q. Mr. Bliss, without being charged with leading you, what was the purpose of this agreement to sell all the lands [87] of the company? What was the immediate purpose?

A. To get the money.

(Testimony of William S. Bliss.)

Q. They wanted a lot of money, did they?

A. Yes.

Q. It would have produced a lot of money if they had sold it. Did that need for money continue with the stockholders and the directors?

A. All the time.

Q. All the time. Mr. Bliss, did you receive a salary as president?

A. No, no salary.

Q. Did you render lots of services?

A. I gave all my time to it a good part of the time.

Mr. Helvern: All your time.

The Member: Mr. Helvern, I think we will take a recess now.

(Whereupon a short recess was taken after which the proceedings were resumed as follows:)

Q. (By Mr. Helvern) Mr. Bliss, I hand you Exhibit 15.

This is already Petitioner's Exhibit in evidence, your Honor.

This Exhibit 15 you have not familiarized yourself with particularly, Mr. Bliss, but it shows the block numbers of your land, the amount of acreage, shore frontage feet and valuation; and it also shows in red all sales and other dis- [88] positions made of those lands down to the end of the year 1938. I am going to ask you some questions about those sales. This, the red figures in this column represent the amount that the company charged off as the March 1, 1913 value according to your appraisal as

(Testimony of William S. Bliss.)

the cost of those lands. The black figures under "sale price" indicate how much you received for it as per the company records. These are the figures shown by the books and checked. Mr. Bliss, you made certain sales to Fulstone, one Fulstone, in Blocks 2, 3, 4, 9, and 10; 2, 3, 4, 9 and 10. These sales were made at something of a loss over the figure—something less——

Mr. Murray: (Interposing) If your Honor please, I should like to object to this leading. Now, he has the thing in front of him there and I object to the leading questions.

Mr. Helvern: If your Honor please, I didn't want to go into every sale on this list, but I did want to take some representative large sales at a profit, some large sales at a loss. Government counsel may ask the witness any questions regarding any other sales shown on this list. If I do not designate the sale it will take an extremely long time for the witness to find the sales that I am referring to.

The Member: All right. Go ahead.

Q. (By Mr. Helvern) These sales to a Mr. Fulstone, are you [89] familiar with those, Mr. Bliss?

A. Yes, sir.

Q. In what year were they made? You can refresh your mind by looking at the date. Fulstone sales in Blocks 2, 3, 4, and 9.

A. Is this date given here? Oh, yes.

Q. Yes, sir.

A. Here it is. '22 and '20 and '20 again, and——

(Testimony of William S. Bliss.)

Q. (Interposing) Well, these sales were generally in '20 and '22, were they not, Mr. Bliss?

A. Here is one '23.

Q. And in Blocks 9 and 10, those are the last ones? A. '23 again and in '24.

Q. From '20 to '24 would you say, Mr. Bliss, the sales were made to Mr. Fulstone? A. Yes.

Q. Those sales for the most part were made at something at a loss over your estimated fair value?

A. Yes.

Q. Do you recall that that is true? A. Yes.

Q. And it is shown by the statement. What was the reason why those sales were made at something less than you appraised the land?

A. Well, I had a number of stockholders after me for divi- [90] dends. I remember getting a letter from one of the Yeringtons asking for a thousand dollars, "For heaven's sake!" to get it for him. We made the sales and then we had a lot of expenses and I had to keep money ahead. For instance, a little quick trip to Washington, I had to have some money to go on.

Q. You made them at a lower price because you had to have the money, is that so?

A. Yes. Well, that's about correct.

Q. Now, Mr. Bliss, to save time, you made some sales to Crown Willamette Paper Company?

A. Yes.

Q. In Blocks 20, 21 and 22. Will you refer to Blocks 20, 21 and 22? A. Yes, I know that.

(Testimony of William S. Bliss.)

Q. You will find these sales, I believe, were made at a loss also; perhaps a ten per cent loss from your appraisal.

A. Do you want the dates? '23. Well, they were all in '23, yes.

Q. All sold in '23 to Crown Willamette. Does that schedule show that they were sold at a loss?

A. To the Crown Willamette?

Q. Yes, sir.

A. Yes. That was sold at a loss.

Q. Was there a large amount of money involved?

[91]

A. Considerable, yes.

Q. How much money approximately?

A. Oh, \$60,000-odd.

Q. In sales price? A. Yes.

Q. I think that you agree and I recall that those sales were made at a loss also of ten per cent or possibly more? A. Yes.

Q. Why were those sales made at a loss in 1923 and how do you explain that?

A. Well, it was a big bunch of land, for one thing.

Q. A large quantity was sold?

A. It was quite an acreage.

Q. Yes.

A. And we would have liked to have sold the whole thing, of course. And then I had them after me all the time and this expense for keeping the lake in shape. If they drained that lake it would just ruin the land.

(Testimony of William S. Bliss.)

Q. You needed the money, and you say "they" were after you. Who? The stockholders?

A. The stockholders.

Q. Yes, sir. And you had to have the money?

Mr. Murray: If your Honor please, I will just have to ask that this be brought out by testimony of the witness.

The Member: Yes. It is all right to lead on preliminary matters, that is, with regard to pointing out to the [92] witness what is in the exhibit. As I understand it, this exhibit is already admitted into evidence. But when it comes to the ultimate questions to be asked, counsel should refrain from leading.

Mr. Helvern: I was just going to save a little time, your Honor.

The Member: Yes.

Q. (By Mr. Helvern) Mr. Bliss, I will mention three more sales in the same class as those we have discussed. Norman de Vaux in Block 11 and also two to Lora J. Moore in Block 19 and R. A. Hardy in Block 10. Would you mind referring to those sales and tell us if they do not reflect a loss?

A. Yes, I remember that one.

Q. You recall the sale. And without leading you, what was the reason for selling those lands at a loss, or what is your explanation?

A. Well, it's the same as selling the other lands at a loss.

Q. Yes. Well, that's enough. Mr. Bliss, we now go to another type of sales. In Block 22 in 1928

(Testimony of William S. Bliss.)

you sold some land to Lora J. Knight, in Block 22.

Would you mind referring to that sale?

A. I know it. I remember the land.

Q. You remember it? A. Yes.

Q. What was the approximate selling price of that land? [93] A. Ten thousand.

Q. What was the cost shown on that statement in red, Mr. Bliss, right opposite the selling price?

A. In red?

Q. Yes, sir. A. In red?

Q. In red right against the selling price.

A. \$3,713.

Q. Sold for \$10,000 and \$3,713? A. Yes.

Q. Explain the profit on that sale.

A. Well, Block 22 consisted of a great many acres and this lot I sold to Mrs. Moore at 40 acres in it. When I put the '13 price on it I hadn't looked over this special 40 acres. When I did look it over I found that there was a little beach in there, a cove, and it was more valuable than the rest of the land. So I asked that price.

Q. Yes. You overlooked this particular factor in March, 1913? A. Well,— (Pause).

Q. Why did you overlook it?

A. I didn't go over every 40 acres of the 44,000.

Q. Mr. Bliss, we have a sale in Block 17 to Kerman and Short. Block 17 to Kerman and Short. Perhaps you remember that one. [94]

A. Block 17?

Q. Yes, sir. A. Yes.

(Testimony of William S. Bliss.)

Q. And what was the selling price of that piece of land? A. Here it is. \$25,000.

Q. \$25,000? A. Yes.

Q. What was the cost, in red opposite that?

A. \$22,430.

Q. Is there any explanation for that sale at a profit over your estimate?

A. That was in '28. I know I was dickering with them about it, but whether I made the sale I am not sure. But I will tell you about it.

Q. Yes. Excuse me, you did not make that sale, Mr. Bliss. A. No.

Q. You did not make that sale. A. Oh.

Q. You had separated from the company at that time? A. Yes.

Q. Block 7 and 8, a sale to de Longchamps. I think that was one that you made. Do you remember it? A. Here it is.

Q. Yes. From your memory, and you can refresh it, how much was that sale for, Mr. Bliss? [95]

A. Well, I didn't make that sale either.

Q. You didn't. We will skip that. A sale in Block 13 to W. D. Barton. Block 13 to W. D. Barton. A. Yes.

Q. How much was that land sold for? It was sold you, was it not? 1926.

A. '22 and '26, two sales.

Q. Yes, sir.

A. Do you want the '22?

Q. That was sold for how much?

A. Sales price a thousand dollars.

(Testimony of William S. Bliss.)

Q. And what was the cost, Mr. Bliss?

Mr. Murray: I don't know what he means by "cost".

Mr. Helvern: The March 1, 1913.

The Member: The March 1, 1913 value as put upon it by the company itself.

Mr. Murray: O.K. That is swell.

A. It was a thousand dollars.

Q. (By Mr. Helvern) That was sold for just a thousand dollars. The other sale to Mr. Barton was—you mentioned another sale? A. \$3,500.

Q. The selling price. And the March 1, 1913 value of that, according to the company?

A. \$2,520. [96]

Q. Pardon me? A. \$2,520.

Q. March 1, 1913 value \$2,520, sold for \$3,500?

A. Yes.

Q. I think that is all we need of that. Mr. Bliss, in view of the sales which you have reviewed and that have occurred afterwards, would you reasonably have expected certain discrepancies up and down in the selling price of the property which you valued?

A. Oh, there are bound to be in all sales.

Q. Yes.

A. When you come to remember back 30 or 40 years, it is pretty hard to say just the exact reason.

The Member: Does your company still own any land up there?

The Witness: Yes. This company owns it, but I am out of it now.

(Testimony of William S. Bliss.)

The Member: You are out of it?

The Witness: Yes.

The Member: Do you own any land up there

The Witness: No. Myself, personally?

The Member: Yes.

The Witness: No. Well, three of us are in a little subdivision. It doesn't amount to much, though.

Q. (By Mr. Helvern) Mr. Bliss, I hand you Exhibit 13. Would [97] you review that exhibit and tell us what it means, briefly?

A. Well, I will read it.

Q. All right. Read it.

A. "Resolved: That Carson and Tahoe Lumber and Fluming Company, represented by its truly qualified and acting officers, desiring to comply with the United States Income Tax Law, in order to arrive at the value of the Company's property as of March 1, 1913, does hereby fix as the actual value of its real estate holdings located in Washoe, Ormsby and Douglas Counties, Nevada and El Dorado and Placer Counties, California, as being of the value of \$260,000 as of date of March 1, 1913".

That date is January 29, 1918.

Q. Mr. Bliss, you said that that was in compliance with the United States Income Tax Law?

A. Yes.

Q. Do you know why the company entered that resolution other than what it says? You signed that resolution, Mr. Bliss? A. Yes.

Q. Do you remember anything in connection with it?

(Testimony of William S. Bliss.)

A. Well, as I remember, they had a \$2,000,000 valuation, didn't they, on it before then?

Q. It has been in evidence that originally they had \$2,000,000. [98]

A. After they went out of business in '98 they naturally considered the land wasn't so valuable. But why they put—well, maybe they put the \$260,000 because that's the first price on the stock in '73 that the company had. Just as they were going into business they had a value of \$260,000, and if they went out of business I suppose they went back to that same thing. I don't know, though.

The Member: When you say "went out of business", you mean went out of the lumber business?

The Witness: Yes. They closed the lumber business in '98.

Q. (By Mr. Helvern) You don't know any other reason why that was made? A. No.

Q. Mr. Bliss, on the face of it this states that that was a value at March 1, 1913 of these lands. Would you have sold any of these lands at March 1, '13 for \$260,000?

A. No. The stockholders couldn't put any other value on it, so they chose the first values.

Q. Mr. Bliss, you are no longer connected with the Carson and Tahoe Lumber and Fluming Company? A. No, sir.

Q. And when did you sever your connection with that company? A. In '28, I think.

Q. '28. What was the cause of your leaving

(Testimony of William S. Bliss.)

the Carson and [99] Tahoe Lumber and Fluming Company?

A. Well, the vice-president—I was the only one up to that time that was given permission to sell the land.

Q. You were the only one who had permission to sell land?

A. Yes, according to that list and so on. The vice-president wanted to sell some land, I thought, to some friends of his, and he insisted on my selling it at a much lower price than I would agree to. Then finally there were only three directors. He and the other director passed a resolution allowing the vice-president, that is, the vice-president himself, to sell the land and he finally did sell to his friend. And I enjoined them, and while—before the Judge had decided Mr. Ogden Mills came out and I had a talk with him and offered to turn our stock in, the three of us, my sister, my brother and myself, in exchange for land. And we dickered back and forth and finally made the exchange. We called it the Bliss Company, the land that we took over, and we gave our stock in the company. And I still continued to handle the Bliss Company, but I gave up the management of the old lumber company.

The Member: Pardon me. What connection did Ogden Mills have with it?

The Witness: Oh, D. O. Mills, his father, had a third interest in it.

The Member: Oh, I see. [100]

(Testimony of William S. Bliss.)

Q. (By Mr. Helvern) Mr. Bliss, I hand you Petitioner's Exhibit 14, minutes of a meeting of the Board of Trustees of the company, dated May 11, 1926. Will you tell me just what that resolution covers?

The Member: Is this Exhibit in evidence?

Mr. Helvern: It is in evidence, your Honor.

The Member: I assume that the Exhibit speaks for itself, then.

Mr. Helvern: Yes, it does.

Q. (By Mr. Helvern) Mr. Bliss, without taking the time to read that through, at the bottom of these minutes and added thereto is a statement signed by you. Would you mind reading this statement, that short statement signed by yourself in those minutes?

A. "I have subscribed to the above as being correct but wish to add that going prices the south-east quarter of southwest quarter of Section 27 Township 14 North Range 18 East is worth more than double the price the company is offering at and therefore I would note 'No' on the above resolution concerning the same."

Q. Do you recall to whom they were selling the same?

A. Yes. A man named George Malley.

Q. George Malley? A. Yes.

Q. You thought it should be sold for twice what they got for [101] the land?

A. That is correct, from that statement.

(Testimony of William S. Bliss.)

Q. This happened in 1926. But you stayed with the company for two years, and yet you objected to the sales of the land. What happened in the meantime? A. I think we made no sales.

Q. No sales? Why not?

A. Well, I was heading them off.

Q. How did you "head them off"?

A. Yes. He wanted to sell some land in Zephyr Cove to Malley, and I wouldn't sell it to him. I was at the time selling it. This was before Murphy took hold. I wouldn't sell it to him and that started things. Then he picked out this other piece in Cave Rock and finally did sell it.

Q. You mean they sold no lands in all that period from '26 to '28?

A. I don't remember whether we did or not.

Q. Well, Mr. Bliss, isn't it true that there was a reason why they couldn't sell those lands?

Mr. Murray: If your Honor please, the leading is going too strong again now.

Q. (By Mr. Helvern) Well, you don't know of any reason why they couldn't sell the lands?

A. Well, we were squabbling to beat the band.

Q. In what manner were you squabbling? [102]

A. The Directors. They wanted to sell at low prices and I objected.

Q. And you left the company? A. What?

Q. You left the company in 1928 and your brother and your sister left at the same time?

A. Yes.

(Testimony of William S. Bliss.)

Q. What happened at that time?

A. Well, we turned our stock in.

Q. And what did you receive for your stock?

A. For a certain amount of land.

Q. Certain lands? A. In Nevada.

Q. Mr. Bliss, I hand you again a copy of Exhibit 15. You will notice certain lands on there. Did you see which lands went to you and your brother and your sister at that time? You may find that in a distribution to stockholders, I believe, on that list. It is identified on that list, is it not? A. The distribution to stockholders?

Q. I just wanted to say there is a record of the land that went out to you and the other stockholders. A. Yes.

Q. Do you find it there?

A. Yes. Here it is, isn't it? [103]

Q. Yes, that is right. Mr. Bliss, you received certain lands. Do you still own those lands that you and your brother and your sister received?

A. No. We sold them.

Q. To whom did you sell them?

A. George Whittell.

Q. In what year?

A. Oh, I forget the years. I guess it was——

Q. (Interposing) Sir?

A. I forget the years.

Q. Yes. Did you sell it at a profit or a loss?

A. Profit.

Q. Over the March 1, 1913 value?

A. Profit.

(Testimony of William S. Bliss.)

Q. Did you sell those lands at a profit or a loss? A. At a profit.

Q. Are you familiar with the records of Bliss Company?

A. Speaking about "profit" or "loss", I'm talking about a profit over the 1913.

Q. Yes, sir. I realize that, Mr. Bliss. Mr. Bliss, tell me, you and your brother and your sister took certain of these lands? A. Yes.

Q. A large quantity of lands? A. Yes.

[104]

Q. (By Mr. Helvern) Mr. Bliss, you stated that you left the Carson and Tahoe because of controversies between yourself and the vice president and other trustees? A. Yes.

Q. Regarding sale prices to be charged for lands? A. That's it.

Q. You left them in 1928. But you specifically objected to a sale to one George Malley?

A. Yes.

Q. In 1926. Was that the first time that you had ever had any controversy with the other directors or stockholders or officers with regard to the selling price of those lands?

A. No. I got along with them in pretty good shape up to that time.

Q. You didn't object to any sales at a price lower than what you had determined?

A. No.

Q. And you have explained some of those. Mr.

(Testimony of William S. Bliss.)

Bliss, I show you a copy of page 103 of the minute book of the company, and I would like to have you read from the first full paragraph of that page of the minute book.

A. "Whereas, on July 26, 1926, William S. Bliss, Walter D. Bliss, Hope Bliss and C. T. Bliss, Stockholders in said [106] corporation and owners and in possession of 206 shares of the capital stock, commenced an action in the District Court of the United States in and for the District of Nevada against this company, and the Board of Trustees thereof asking, among other things, to enjoin them from selling the assets, the said suit being No. E-159, and that the said case was tried on the merits in September, 1926 and thereafter submitted for decision, but that the said case has never been decided; that ever since the beginning of said action and there is now an injunction issued in said case enjoining the trustees from selling all or any property of the company and liquidating it to the stockholders, and which said injunction further provided the trustees from considering offers for or negotiating sales of the property".

Is that enough?

Mr. Helvern: That is enough.

Do you wish any more of this put in the record?

Mr. Murray: Let me see it.

(The minute book referred to was passed to Mr. Murray.)

Q. (By Mr. Helvern) Mr. Bliss, from what

(Testimony of William S. Bliss.)

you have read it appears that you, your two brothers and your sister did commence a suit against the company enjoining them from the sale of lands? A. Yes.

Q. Isn't that so? [107] A. Yes.

Mr. Helvern: I have no further questions.

Mr. Murray: Before I would agree to this, I would like to have time to look at this to see if I want more of this minute in.

The Member: All right.

Mr. Helvern: I am not quite through with the witness.

The Member: All right. Do you have further questions, Mr. Helvern?

Q. (By Mr. Helvern) Mr. Bliss, has the Federal Government with regards to any valuations used by you in your income tax return——

A. (Interposing) I didn't understand you.

Q. Has the Government with respect to any valuations used by you in your income tax returns ever objected to the March 1, 1913 value used by you with respect to lands sold?

Mr. Murray: I object to that, if your Honor please, being absolutely, incompetent, irrelevant and immaterial to this case.

The Member: Objection sustained.

Mr. Halvern: Exception.

He is your witness, Mr. Murray.

Cross Examination

Q. (By Mr. Murray) Mr. Bliss, a while ago I understood you [108] to say that back around

(Testimony of William S. Bliss.)

1913 sometime, somewhere in the early days—I wasn't sure of the time—the land up there was pretty cheap, did you not?

A. They had been selling it before then at very low prices.

Q. What prices, for instance?

A. Oh, my father sold some land ten, fifteen years before I think for four or five dollars an acre or something of the kind; shore land or something of the kind.

Q. Some shore land for four or five dollars an acre?

A. Yes. They had no—they just wanted to liquidate, that was all.

Q. About what time was that, in period of time?

A. Well, it was before they shut down, I think, in '98.

Q. Well, in 1912 when you had before the company the matter of trying to liquidate the rest of the land, the 44,000 acres, what elements did you use in arriving at your figures that you gave them?

A. Well, I knew the land pretty well and I knew that some of the land was very valuable. So I put a certain value on the shore per foot, a certain value on acres for building sites, and then a lower value on back land.

Q. Did you have any idea at that time that the prices you put on in 1912—at the prices that you put on it could be sold immediately or anything like that?

(Testimony of William S. Bliss.)

A. I thought so, yes. In fact, Edwards and Brewster boosted [109] it up to me. They wanted the option on it and that was the understanding. They didn't get any commission on it. They were to sell at a profit.

Q. But they got an option on it only?

A. Yes.

Q. And they didn't ever exercise the option?

A. No.

Q. On anything. They didn't sell anything?

A. No, I think they had a customer, as they said, in one of the letters who was going to take it over. They thought they would make an immediate sale, but on account of the war emergency, or something of the kind the customer fell through. So they didn't make the sale.

Q. You read from Petitioner's Exhibit No. 9 the letter to yourself by C. M. Wooster, and I want to repeat a couple of the paragraphs preliminary to asking you a question. They were asking for an extension of thirty days on the option?

A. They were asking, I think, a year. We gave them thirty days.

Q. Oh, I see. They were asking for an extension? A. Yes.

Q. They hadn't done a thing on it? They hadn't bought anything or sold anything, is that right? A. No.

Q. And on April 5, 1913 they said to you in this letter [110] "I regret that nothing materially has been accomplished under the option. Diligent ef-

(Testimony of William S. Bliss.)

fort has been made but last year was one of liquidation generally throughout this country. It was characterized by conservatism in all branches of business, causing a peculiar money stringency and rendering impossible the floating of a project such as this, * * * *

“* * * * the change caused a general depression in financial affairs.

“We had a number of strong and influential men of affairs from Southern California over the ground and made every possible effort to bring about successful negotiations with this, but the atmosphere of the times was against this.

“I have had negotiations with some people of ample means to take over the project, but about the time they were ready to proceed in the matter, the money trust investigation gave further excuses for conservative methods.

“I have been disappointed in my own efforts, yet I believe it would have been impossible for anyone to have accomplished the sale of the lands during the past year * * *”

Now, that is the truth, isn't it?

A. I don't know. It was his belief.

Q. Well, isn't it your belief, too? Do you think that you could have sold it any better than he could? A. That's years ago. What's that?

Q. Do you think that you could have made any better attempt [111] to sell it than he did?

A. Well, I didn't want him to attempt it any more.

(Testimony of William S. Bliss.)

Q. That isn't answering my question. If you could have sold this property for any price at all back there you would have sold it, wouldn't you?

A. No, sir.

Q. Well, did you ever have any offers for anything of it around 1913?

A. The whole land?

Q. Yes, the whole land. A. No.

Q. There just weren't any offers that you heard of? A. What is that?

Q. You didn't receive any offers?

A. No. Edwards and Brewster were the only ones figuring on taking it all.

Q. Yes. But they very definitely didn't do anything with it? That's right, isn't it?

A. No. That's quite right.

Q. Now, you had some kind of an agreement dated 1912 with the company whereby, if the lands were sold at these prices which you suggested you would get ten per cent commission. That's right, isn't it? A. Yes.

Q. Well, that was a five-year contract, wasn't it? [112] A. Yes, I believe so.

Q. Well, why was the five-year element placed in there?

A. I haven't any idea, except that we wanted to sell it and thought we could sell it.

Q. Well then, these prices that you hoped to get were something that you hoped to get over the five-year period, wasn't that so?

(Testimony of William S. Bliss.)

A. Yes. After talking with Edwards and Brewster they took their contract just about the same time and we talked it over before. They were going to sell it within a year, so I thought five years was enough.

Q. You mean they thought they were?

A. I don't know.

Q. They thought they were going to sell it?

A. They claimed they were.

Q. But they didn't sell anything, did they?

A. No, sir.

Q. Now——

A. (Interposing) And Edwards and Brewster were going to sell it for a higher price than I put on it.

Q. You mean they thought they were? They thought they were going to sell it?

A. They promised. They had to do it to make a profit.

Q. I see. But they didn't sell it?

A. No, sir. They didn't sell it. That's the fifth time, I think. [113]

Q. Now, Petitioner's Exhibit 13 in evidence, contains the resolution which says "The Carson and Tahoe Lumber and Fluming Company, represented by its duly qualified and acting officers, desiring to comply with the United States Income Tax Law in order to arrive at the value of Company's property as of March 1, 1913 does hereby fix as the actual value of its real estate holdings located in Washoe, Ormsby and Douglas Counties, Nevada and El Dorado and Placer Counties, California as being of the

(Testimony of William S. Bliss.)

value of \$260,000 as of the date of March 1, 1913."

Well, is there any reason to say that that doesn't mean what it says? In other words, the Company did determine then—they had another thought, and they decided to value their property as of 1913 at \$260,000? Isn't that right?

A. I believe so.

Q. Well then, how do you reconcile that with this estimation you had, that they ought to get \$778,000 out of it?

A. Well, I think they took the first \$260,000 when they started business and I don't think they paid any attention to my figures.

Q. You mean the Company didn't pay any attention to what you estimated it might bring?

A. No.

Q. They just disregarded it?

A. They hoped to get it if they could.

Q. They hoped to get all they could? [114]

A. Yes.

Q. But at this time they decided that \$260,000 was a pretty fair estimate of what the value ought to be?

A. I don't think they thought much about it.

Q. Well, that is what they said?

A. That is what they said.

Q. Did you vote on this resolution?

A. I think I did. I think I did.

Q. And it must have been your idea too?

A. I guess it was. But I didn't know of any other figure to put, maybe.

Q. What do you mean by that?

(Testimony of William S. Bliss.)

A. I mean that they chose the first. As they were going into business they weren't worth so much and they had it at \$260,000, the incorporated price, and then as they advanced they made money and they put the price up to two million and something. After they went out of business they got back to the same state that they were in when they started. That's as I look at it. I don't know what happened.

Q. They must have had some idea that the land wasn't worth at the most in excess of \$260,000 when they reduced the capital stock to that, didn't they?

A. I don't think they had any idea about it.

Q. Why did they put on a figure of \$260,000 back in 1907?

A. As I say, they went back to the old figure.

Q. I say the evidence shows that it was in 1917 when they did [115] reduce the stock to 260. What was the basis for that?

Mr. Helvern: I object. The evidence does not show just what counsel has said.

The Member: It was 1907, wasn't it?

Mr. Helvern: I have a general entry that the Company set on the books a figure as the value of the land, and the figure is \$260,000.

Mr. Murray: If your Honor please, I refer to Exhibit 1, which is a minute of the meeting of December, 1917, in which they ordered that the capital stock be reduced to \$260,000.

The Member: I thought it was 1907. I think your question was 1917. That was a mistake.

(Testimony of William S. Bliss.)

Mr. Murray: Oh, I beg your pardon.

Mr. Helvern: I thought counsel said "1917" rather than "1907".

The Member: I did, too.

Mr. Murray: I beg your pardon. I meant '7.

Q. (By Mr. Murray) They just didn't pull that figure out of the air, did they? How did they come at that? A. In 1907?

Q. Yes.

A. Well, I wasn't in the Company in 1907.

Q. Well, your testimony is to the effect that you became vice-president in 1907.

A. 1907? [116]

Q. 1907, the time your father died.

A. It was the time my father died. He died in September.

Q. You mean you were in the Company a little later in the same year?

A. Well, I took my father's place. He died two days before Christmas, 1907.

Q. Did anything happen between 1907 and 1913 that would change the value of lands in Douglas County between 1907 and 1913?

A. Well, I don't know, but the taxes might have shown.

Q. You don't know what?

A. The taxes on it. They went up. The taxes went up, the County taxes.

Q. What were the County taxes in that period, do you recall? A. No, I don't.

Q. If I should tell you that in 1910 and '11 they

(Testimony of William S. Bliss.)

were 40 cents and 20 cents an acre, would you think that's about right?

A. No. I think as a rule they had the back land at \$2.00 an acre and front land ran from one hundred to two hundred dollars an acre.

Mr. Helvern: I object. I want to get the meaning of this question.

The Member: Do you mean the appraisement for taxation?

Mr. Murray: I meant the basis on which the tax was computed. That is what I meant. I can prove it later. I want [117] to test his memory.

The Witness: The tax value?

Q. (By Mr. Murray) The value that was used by the assessor to compute taxes. A. Yes.

Q. I will ask the question again, and if you can't answer it I can prove it later.

A. What date?

Q. In 1910 and '11—withdraw that question.

If I tell you that in 1912 and '13 the lands of Carson and Tahoe Lumber and Fluming Company were assessed at the rate of \$1.25 an acre, would that sound like your memory?

A. Yes, something like it.

Q. And also at the time either for—

A. (Interposing) That's the back land. The front land was much higher.

Q. Is it your testimony that it was taxed in 1913 at a much higher rate?

A. I don't remember just the year, but I know now that they were taxing that front land, some of

(Testimony of William S. Bliss.)

the Counties, at \$150; I think one county at \$200 an acre.

Q. Well, when is it your understanding that they did anything like that? You mean now?

A. They are doing it now and they have been doing it for a number of years. [118]

Q. Oh, yes. Now. But you don't know how long ago or anything like that? A. No.

Q. Mr. Bliss, you say your father died in 1907?

A. Yes.

Q. Do you know what real property he had at the time of his death? A. How's that?

Q. Do you know what real property your father had at the time of his death?

A. Well, he had a house in Carson. You mean real property?

Q. Real property. I mean, limit it up to the lake Tahoe.

A. Well, he had a house up there.

Q. Where was his house?

A. At Glenbrook.

Q. At Glenbrook. And approximately how much land was involved in the home? Is that what you call the home place? A. Yes.

Q. Approximately how much land was involved in the home place? A. Part of an acre.

Q. What is that? A. Part of an acre.

Q. About an acre?

A. No. Less than an acre. [119]

Q. Is that all the land that he owned?

(Testimony of William S. Bliss.)

A. Well, he was interested in the stock, in the company.

Q. No. But I mean of his own ownership?

A. I think he was interested in some back land; 40 acres or 80 acres or something of the kind. I don't remember, though.

Q. Well, at the time of your father's death did he not own an interest in a portion of Zephyr Cove?

The Member: What cove?

Mr. Murray: Zephyr Cove.

The Member: Zephyr Cove?

Mr. Murray: If your Honor please, that is a very important spot on this.

A. As I remember it, only the company owned the land.

Q. (By Mr. Murray) Well, I will show you what purports to be an inventory and appraisement of your father's estate. Did you have anything to do with the handling of your father's estate?

A. No. My mother.

Q. This document indicates that at the time of your father's death he owned a parcel of land which is set out by metes, bounds and feet, and so on, which I can't interpret into acres—I was hoping possibly you could—but it also shows two 40-acre sections of land, which I won't bother to describe now but which you are looking at, and it also says "Also an undivided one-half interest in the fractional east [120] half of north quarter and south-west quarter of northeast quarter; the northeast quarter of southwest quarter", and some more here,

(Testimony of William S. Bliss.)

of Section 10, Township 13, North Range 18 East, containing about 227½ acres. And if I tell you that that is the south half of Zephyr Cove——

A. (Interposing) I guess it is.

Q. Does it look like it to you?

A. I don't know whether there is any frontage there or not.

Q. Would that much knowledge——

A. (Interposing) That's about the location.

Q. Do you agree that your father had an undivided one-half interest in that property?

A. I don't remember anything about it.

Q. Then if I would tell you, further, that in 1910 no matter who owned this section it was appraised in your father's estate for \$2.00 an acre—that's not for the half interest, that's for the whole interest and he had a half of that—would you say that those appraisers were incorrect?

A. I would like to see what part of the map that's on and get a better idea of the acreage.

Mr. Murray: If your Honor please, at this stage I have two maps that I have had an engineer draw, one of my associates, and as soon as I can I would like to get them in evidence so that I can cross examine and use them later for my own witnesses. Counsel has not had an opportunity to check them, [121] but I don't want them to go in as proof of the facts. I have certain locations, different colors of property, and one thing and another, and I will tie it all in with other evidence. But at

(Testimony of William S. Bliss.)

this stage I would like to offer that map. In fact, it is two maps: One large-scale map, and one small-scale map. I would like to offer that map in evidence, if counsel doesn't object.

The Member: Are you through with the cross examination of this witness?

Mr. Murray: No, that at all.

The Member: Perhaps this witness can identify this particular property better from the map which he himself prepared. I think it is already in evidence. I just suggest to counsel that the witness probably could use his own map better.

Mr. Murray: May I look at these to see which might be the best?

The Member: Yes.

Q. (By Mr. Murray) I show you Petitioner's Exhibit 8, which I understand to be a map which you prepared yourself showing the way you blocked the Carson and Tahoe lands.

A. Now, what was that description?

Q. Well, it is in Section 10 in Township 13, Range 18.

A. Here's 10. What are the details?

Q. It says "Fractional east half of northwest quarter". [122]

A. "East half of northwest quarter"?

Q. Yes? A. Yes.

Q. That's right on the lake, isn't it?

A. Yes.

Q. "Southwest quarter of northeast quarter".

A. Yes.

(Testimony of William S. Bliss.)

Q. That's on the lake, too, isn't it? A. Yes.

Q. "Northeast quarter of southeast quarter."

A. Of southeast? Yes.

Q. "Northwest quarter of northeast quarter".

A. The what?

Q. "Northwest quarter of northeast quarter".

A. Yes, that's back land.

Q. "Northwest quarter of southeast quarter"?

A. Yes.

Q. That's all of Section 10. Now, what does that take in with respect to Zephyr Cove there?

A. It takes in pretty near all of it..

Q. Pretty near all of it? A. Yes. .

Q. Well now, if the property were reported in the inventory and sale—if I tell you that it was reported in the inventory and appraisalment of your father's estate, would you [123] have any doubt that he owned that half interest at that time?

A. Oh, I guess he owned it. This was in '7, wasn't it?

Q. This was in 1910 that this appraisal was made.

A. Of his estate?

Mr. Murray: I will show you this document.

May I have it marked for identification?

The Member: Let me see the map, Mr. Witness.

The Clerk: Respondent's A for identification.

(The map so offered for identification was marked "Respondent's Exhibit A".)

Q. (By Mr. Murray) This document I have been reading from is now marked for identification as Respondent's Exhibit A. Then you have identified

(Testimony of William S. Bliss.)

that property that I have read to you as pretty much all of Zephyr Cove there? A. Yes.

Q. Now, I think I will just let that rest for now.

A. Well, just a minute! You are speaking of those low prices. I told you a short time ago, or a while ago, that I revamped all those prices around the lake; that they had been very low for a long, long time.

Q. Yes. But I understood you to say that that was before 1900. This is 1910 now.

A. I am saying it before I made that list in 1912.

Q. Well, on what basis did you revamp those prices. I mean, on what basis did you revamp them? [124]

A. Well, they had been selling land there for anything they could get for it.

Q. Up to 1910, then, too?

A. Yes, and——

Q. (Interposing) Well, isn't that the best way to tell what land is worth, what you get for it?

A. Well, some of them had owned it for 30 or 40 years. In fact, we were interested in this lumber company since '71, you might say, and a great many got tired of holding it and when they had an offer of any kind they would let it go. And I decided that the whole thing was altogether too cheap.

Q. You decided to hold them?

A. To hold them? No. I decided that the prices were too cheap, and then Edwards and Brewster came around and I figured out these prices and they jumped at them.

(Testimony of William S. Bliss.)

Q. They "jumped at them". What do you mean? They didn't buy anything, did they?

A. They didn't, but they thought they would.

Q. But you didn't sell any of the land?

A. No, I didn't. That's the sixth time.

Q. Well, I want to make that very clear because you keep referring to it.

The Member: Was there any hotel on the lake in those days?

The Witness: Oh, yes. Comstock had a hotel there and [125] his father ran it before. There were little hotels around there.

Q. (By Mr. Murray) Those were on the California side, were they not?

A. Yes. There's Glenbrook, too.

Q. How much of a hotel was Glenbrook in 1910?

A. Well, the Comstock people put up what they called a "club". Sharon and Ralston and all those people belonged to the club. That was at Glenbrook. And they finally sold it for a hotel.

Q. Well, that was the only semblance of a hotel on the Nevada side in 1913, wasn't it?

A. Yes. About all there is now.

Q. Now, you don't think much of the Zephyr Cove hotel, then?

A. I have never seen it that I know of. I have been by it, through Zephyr Cove.

Q. Mr. Bliss, I show you a document which appears to be the capital stock tax return of Carson and Tahoe Lumber and Fluming Company for the

(Testimony of William S. Bliss.)

year 1916, and ask you if that is your signature?

A. Yes, sir.

Mr. Murray: I would like to offer this in evidence as Respondent's Exhibit.

Mr. Helvern: Your Honor, I object to the offer in evidence of that without examining it. I want to ask what is sought to be proved by this capital stock tax return. [126]

Mr. Murray: Contrary statements to what the witness is now testifying to.

Mr. Helvern: I have no objection to this going in an the capital stock tax return, but not as proving anything.

Mr. Murray: That is all I am interested in now.

The Member: It will be admitted in evidence.

The Clerk: "B".

(The capital stock tax return so offered and received in evidence was marked "Respondent's Exhibit B" and made a part of this record.)

Q. (By Mr. Murray) This capital stock tax return Respondent's Exhibit B, has a statement attached right above your name on it, which says: "This company is the owner of 35,000 to 40,000 acres of land situate around Lake Tahoe——"

A. (Interposing) What is the date of it?

Q. The return was sworn to January 25, 1915 and is the Federal Stock Tax Return for 1917.

I will repeat the statement.

It says "This Company is the owner of 35,000 to 40,000 acres of land situate around Lake Tahoe, at an elevation of from 6300 to 9000 feet above sea

(Testimony of William S. Bliss.)

level, which is rented for grazing purposes at the rate of 5 cts. to 7½ cts. per acre per year. This income will not pay expenses.

“In the last five years this Company has sold 640 acres, netting about \$5.00 per acre. Some of this land might answer for hotel sites, at a higher valuation, but would say [127] as a whole it could not be sold for over \$3.00 per acre if at that. Consequently have written in paragraph 8—520 shares at \$200.00 per share, equal to \$104,000.00”.

Why in 1917 were you saying that this 35,000 to 40,000 acres wouldn't sell for any more than \$3.00 per acre “if at that”, if you had an idea it was worth so much more?

A. I don't know. I made my list out and hoped to sell the land at that list price. But as a whole I don't know why that is there. I don't know who drew that up.

Did you draw that up?

Mr. Helvern: No.

Q. (By Mr. Murray) What do you say about it now? Is it your opinion now that the land was worth more than \$3.00 an acre in 1917?

A. All the land you mean?

Q. The whole land. A. You bet it was!

Q. Then you are retracting this statement that you made on here, is that it?

A. Well, that dates—now I say it is. I don't know about this statement.

Q. But you don't have any doubt but what you understood that when you signed the return, do you?

A. I guess I must have.

(Testimony of William S. Bliss.)

Q. So that was your idea at that time? [128]

A. I didn't draw it up.

Q. But this was your idea in 1917?

A. Yes, sir.

Q. Do you remember of a tax sale right in 1912 or '13 involving some property which had generally been claimed by Carson and Tahoe Lumber and Fluming Company? A. I don't recall it now.

Q. You don't remember of some acreage being sold for taxes early in 1913?

A. You mean the lumber company's tax?

Q. The lumber company's land.

A. Yes. I think in Douglas County.

Q. Yes, that is what I mean.

A. And I sent in, or the tax return came back so many acres in Section so and so and didn't designate the acreage—the quarter section, and it was sold at Sheriff's sale.

Q. Yes. That's a public sale?

A. Yes. And when I heard of it I asked them to get a deed from Dangberg, and they didn't want to. They said they would expunge it from the records. I said that wouldn't do us any good. I said "what about the Sheriff?" They finally got a deed from Dangberg and we paid the tax on it.

Q. This doesn't have to do with anything like that. This was some land sold to Mr. S. C. Bigelow, in 1913. Do you recall such an incident? [129]

A. No, I don't remember.

Mr. Murray: I would like to have this marked for identification as Respondent's Exhibit C.

(Testimony of William S. Bliss.)

The Clerk: "C".

(The statement so offered for identification was marked "Respondent's Exhibit C".)

Mr. Murray: There are two documents here. So I will ask that they be marked for identification as Exhibits C and D.

(The document so offered for identification was marked "Respondent's Exhibit D".)

The Member: You say you built that railroad down to Truckee?

The Witness: Truckee to Tahoe.

The Member: That is operated by the Southern Pacific now?

The Witness: Now, yes. We gave it to them.

The Member: Oh.

The Witness: To get a broad gauge in there and to sell the tavern, we gave the Southern Pacific for a dollar the road.

The Member: You sold the tavern to them?

The Witness: No. We sold it to Dolman, Drumm and Fleishhacker and five of them. What's that hotel man's name? I have forgotten. Five of them. Supposed to be wealthy men. [130] But they wouldn't do anything about it unless they had a broad gauge in. So we turned the railroad over to the Southern Pacific Company.

Q. (By Mr. Murray) Who was or is E. B. Yerington?

A. He was the son of H. M. Yerington, who was the president before me.

(Testimony of William S. Bliss.)

Q. That is, the father was president before you?

A. Yes.

Q. Do you know Mr. E. B. Yerington's signature?

A. Yes, sir.

Q. I show you a document which is a statement of taxable income of Carson and Tahoe Lumber and Fluming Company in Douglas County, Nevada, and ask you if that's Mr. Yerington's signature?

A. Well, it don't seem to be. It looks like it, yes. I guess it is. But I have seen a different "Y" on it, it seems to me.

Q. It is here twice.

A. I guess that's his signature.

Mr Murray: I offer in evidence a certified copy of the document which Mr. Bliss has just identified as having the signature of E. B. Yerington, the secretary of Carson and Tahoe Lumber and Fluming Company. It is a statement of taxable property belonging to or under the control of Carson and Tahoe Lumber and Fluming Company, Carson City, during the [131] year 1920. A certified copy.

The Member: No objection.

Mr. Helvern: No objection.

The Member: I accept it in evidence.

The Clerk: E.

(The document so offered and received was marked "Respondent's Exhibit E" and made a part of this record.)

Q. (By Mr. Murray) Mr. Bliss, this is another document that purports to be the statement of taxable

(Testimony of William S. Bliss.)

property of Tahoe Company for the year 1921, and I ask you if you can identify Mr. Yerington's signature. A. Yes, that is his.

Mr. Murray: I offer a certified copy of the statement of taxable property of Carson and Tahoe Lumber and Fluming Company, signed by E. B. Yerington, for the year 1921.

The Member: No objection?

Mr. Helvern: No objection.

The Member: Accepted in evidence.

The Clerk: F.

(The certified copy of statement of taxable property so offered and received in evidence was marked "Respondent's Exhibit F" and made a part of this record.)

Q. (By Mr. Murray) Mr. Bliss, how did the location of the home of your mother and father at Glenbrook, the land there, compare in value with other land along the lake shore? [132]

A. Well, that was sort of subdivision property. You can't compare it. Some of those subdivisions brought \$75 to \$80 a front foot.

Q. At what time?

A. Well, they are doing it now.

Q. Well, then?

A. This is away back years ago.

Q. And is it your testimony that it was as good or better or worse than the rest of the land along there?

A. You can't compare it, acreage land, with a town lot.

(Testimony of William S. Bliss.)

A. It is more valuable, is that your testimony?

A. Why, sure!

Q. And, of course, it was more valuable in 1913?

A. I don't know what he paid for it. It might have been given to him as far as that goes.

Q. Are you familiar with the property that was in your mother's estate when she died?

A. No. I was at that time.

Q. What is your memory as to the property on Lake Tahoe which she owned at the time of her death?

A. She owned stock, as far as I remember. Did she have any property on lake Tahoe?

Q. I show you what purports to be an inventory and appraisalment of your mother's estate.

I ask that that be marked for identification, please, [133] as Respondent's Exhibit.

The Clerk: G.

(The inventory so offered for identification was marked "Respondent's Exhibit G.")

Q. (By Mr. Murray) And I show you in one page of this document which is now Petitioner's Exhibit G for identification, what is listed as the real property in your mother's estate at the time of her death, and ask you to look it over.

A. Well, I know about the lot.

Q. What is the lot? I mean, what do you mean you "know about the lot?" What is that place?

A. I know where it is and all about it.

Q. Is that the home place?

A. That is the home place.

(Testimony of William S. Bliss.)

Q. And that's the one that had more value than most of the things around there at that time in 1913, is that right?

A. Well, I suppose so. I don't know, but what's his name was anxious to have it then, and might have given it to him. That was bought in '84, I think.

Q. I am not speaking about it at that time.

A. Oh! Oh, I see.

Q. I am speaking about it at the time of your mother's death.

A. Yes.

Q. And that is the same place that came to your mother from your father at the time of his death, isn't it? [134]

Q. (By Mr. Murray) Mr. Bliss, Respondent's Exhibit B is the capital stock tax return of Carson and Tahoe Lumber and Fluming Company for the year 1913, which you identified by your signature on there, and wherein there was stated on the return that you signed—I will just read that one sentence—“Some of this land might answer for hotel sites at a higher valuation, but would say as a whole it could not be sold for over \$3.00 per acre if at that. Consequently have written in paragraph 8—520 shares at \$200.00 per share, equal to \$104,000.00.”

For the purpose of this return this 35 to 40,000 acres includes the land here in question, does it not?

A. I suppose it does, yes.

Mr. Helvern: Objection, your Honor. We are trying to prove something from a statement made

(Testimony of William S. Bliss.)

on a capital tax return [136] for a certain purpose for the Government. We are engaged here in a controversy relating to income taxes where valuations were made for an entirely different purpose. I object to this testimony as being irrelevant and incompetent with respect to proving values for income tax purposes.

The Member: The objection is overruled. I think it is proper cross examination.

Q. (By Mr. Murray) Then, to go on, as I understand your capital stock tax of this company for 1916 was valued at \$104,000, which is equal approximately to \$3.00 an acre for between 35 and 40,000 acres of land. Now, I call attention to what appears to be the capital stock stock tax return of Carson and Tahoe Lumber and Fluming Company for the year 1922, and I——

Mr. Helvern: (Interposing) Objection for the same reason, your Honor.

The Member: The same ruling.

Q. (By Mr. Murray) ——I ask you if that is your signature on there? A. Yes, sir.

Mr. Murray: I will offer this, if your Honor please, as Respondent's Exhibit.

The Member: The same objection?

Mr. Helvern: No objection to offering it as the capital stock tax return of the company. [137]

The Member: Admitted in evidence.

The Clerk: H.

(The capital stock tax return so offered and

(Testimony of William S. Bliss.)

received in evidence was marked "Respondent's Exhibit H" and made a part of this record.)

Mr. Helvern: I hold, however, that it is not competent or relevant and it is immaterial for the purpose of this particular case.

The Member: The same ruling.

Q. (By Mr. Murray) I am reading from a statement of this 1922 capital stock tax return, which is now marked as Respondent's Exhibit H, the following statement:

"The difference in the Book Value of the Capital Stock in 1921 Return, (\$260,000.00) and the 1922 Return (\$215,800.00) was brought about by a re-appraisal of the Company's lands and re-writing of the Company's books, on account of sales of Capital Assets (real estate) and distribution of the proceeds to the stockholders.

"The Fair Value of the real estate is placed at \$73,445.00 being the Fair Value as shown on the 1921 Return (\$90,000.00) less real estate sales during the year 1920 of \$16,555.00. The directors of the company consider this a fair value."

Now, this seems to be another valuation. And will you tell me what that is?

A. I couldn't tell you now. [138]

Q. Would you say that this was a valuation of those properties in 1922?

A. I can't say any more than that does. I don't remember anything about it now.

Q. Well, in any event the value for one purpose

(Testimony of William S. Bliss.)

would have to be the value for all purposes, isn't that right?

Mr. Helvern: I object.

The Member: That is argumentative.

Mr. Helvern: That is a conclusion and argumentative.

The Member: Sustained.

Mr. Murray: I withdraw the question.

Q. (By Mr. Murray) Mr. Bliss, I show you a letter to the Commissioner of Internal Revenue dated May 5, 1924, and I ask you if that is your signature at the end of that letter.

A. Yes, sir. [139]

Q. (By Mr. Murray) On page 1 of this letter to the Commissioner of Internal Revenue of May 5, 1924, the signatures to which you have identified, are the following statements:

“The Company had ceased logging operations in 1896 and since then had been renting its land for grazing purposes and selling the frontage, with at times the back land to control the water shed of the streams, for summer homes and resort purposes. Some of the back land had been sold for the timber remaining on it. It must be admitted that I did not know just how to go about getting the values as of May 1, 1913 on small parcels of land that the company might sell in the future without knowing the parcels, character of the land, location, metes and bounds and so forth. I stated that if all the stock of the Company could be sold at one sale for

(Testimony of William S. Bliss.)

cash I would advise the stockholders to accept the amount of the capitalization of the Company, which is \$260,000, [141] and it was decided this amount in case a sale was made on the above terms was the value of the land”.

Now, do you recall making those statements? Do you recall writing this letter?

A. Well, I wrote the letter no doubt.

Q. Yes. Well now, I would like to ask you, Mr. Bliss, what you mean by saying that you didn't know how to go about valuing the lands as of May 1, '13 without knowing the parcels, character of land, location, metes and bounds and so forth?

A. Well, in '25 Allen told me I hadn't blocked it out right, that I would have to get the price of each piece of land. I told him that I couldn't do it.

Q. Well, when you——

A. (Interposing) So I finally sort of picked out the small pieces as we sold and considered them as of a certain block.

Q. When you put those figures on in 1912 how did you do it? How did you arrive at those figures?

A. Well, mostly through Edwards and Brewster, I think. They had been talking with me about buying it. So I figured out a list as to what we would do and they accepted the list.

Q. Well, did you ever go over this land at that time or anywhere near that time?

A. I have been over nearly all of it, yes. But I hadn't gone over every 44 acres of 44,000 acres. [142]

(Testimony of William S. Bliss.)

Q. Well, what did you mean by saying "I had decided that if all the stock of the Company could be sold at one sale for cash I would advise the stockholders to accept the amount of the capitalization of the Company, which is \$260,000."?

A. Yes.

Q. When did you advise or when would you advise them to do that?

A. I suppose when I wrote the letter.

Q. Well, you were talking about 1913 a paragraph ahead of it.

A. Well, I will tell you. There were a great many changes and sometimes we'd have money enough and other times we didn't have, and that water situation was getting very serious. If they put that tunnel through it, it would ruin the land. Very likely that had something to do with it.

The Member: Put the tunnel through, you say?

The Witness: What?

The Member: You say put the tunnel through?

The Witness: Yes. They were figuring on a tunnel a hundred feet below the surface of the lake, Stone & Webster and the Reclamation Service, and drain the lake a hundred feet.

Q. (By Mr. Murray) When was that, Mr. Bliss? Do you recall?

A. Well, they had been talking about it for years.

Q. When did they first start talking about it?

[143]

A. Oh, I guess back in about 1903 or 1904.

(Testimony of William S. Bliss.)

Q. Then there was always a danger that they might do it? A. Yes.

Q. And when did that danger disappear, if ever?

A. Well, I don't know that it has disappeared yet. However, they would start to interfere with the physical outlet. If they did that we were told by General Webb that they would get control of the riparian rights, and they had a dredge up there and wanted to dredge it out. They had put holes down to blast it out and the boys went out in fishing boats over the holes and prevented them from blasting it out, because if they changed that it would have given Stone & Webster and the Reclamation Service control of the lake, and the riparian rights. We had quite a fight up there. It come up one time and then died down for three or four years and then come up again. I don't remember exactly the years.

Q. That was always hanging over your head?

A. What is that?

Q. That possibility was always hanging over your head? A. Yes.

Q. Did it have any particular effect upon the value of the land? A. Sure it did.

Q. It depressed it, did it not? [144]

A. At times. And when we weren't talking much about it we learned we won out and the land looked better.

Q. What is your idea of the trend of values from 1900 on; generally speaking, the trend of values of the land in Douglas County on the Nevada side of Lake Tahoe?

(Testimony of William S. Bliss.)

A. Oh, I couldn't tell you that.

Q. Did it increase gradually in value or did it stand still or did it go back or what?

A. Oh, it has increased at times and went back, depending on depressions and a thousand and one things. I held my prices pretty well all the same.

Q. You held your prices even if there was a depression on, is that it?

A. Yes. And by the time I got up there to '23 when Allen examined it I had sold—the sales price was only 85 per cent of my listed price. And I think that is doing pretty well.

Q. Well, did you attempt to put a price on in 1913 so you would never have a profit on it?

A. No.

Q. When you got away up into 1920——

A. (Interposing) Talk about “profit”, I don't know just what you mean by that, because we had had that land from the '70s.

Q. But, I mean, was it a disappointment to you when a piece [145] of this property was sold at more than what you thought it ought to bring in 1913?

A. Disappointment to me?

Q. Yes. A. If it sold for more?

Q. Yes.

A. Why should it be a disappointment?

Q. Well, my point is that it seems to me that you said that in 1923 it seemed like there was very little difference as to what had been paid out on the property over what you had appraised it at in 1913, that you had done a pretty good job.

A. Yes.

(Testimony of William S. Bliss.)

Q. Well then, my question is, To do a perfect job it would have sold for just in '13 what it sold for in '23?

A. I didn't expect to do a perfect job in '13 in the sales effort.

Mr. Helvern: I would like to correct the record. The statement was made in the testimony or by Government counsel to the effect that Mr. Bliss's appraisal was made in 1913.

The Member: It was made in 1912.

Mr. Helvern: The point was that the appraisal was made before the passage of the Revenue Act of 1913.

The Member: It was made some time in 1912.

Mr. Helvern: Yes. Some time prior to the passage of the Revenue Act. [146]

Mr. Murray: I am not attempting to change that. I understand that that is 1912.

Q. (By Mr. Murray) No. But the point I would like to make, Mr. Bliss, is this: Didn't it occur to you as anything unusual that as years went by and you did sell some of these parcels that you always sold it at a loss or at a stand-off? Doesn't that seem you might be high in the beginning?

Mr. Helvern: I object, your Honor. It is a conclusion. A. I never thought anything about it.

The Member: Overruled. The witness answered the question.

Mr. Helvern: Counsel made the statement that these sales were always made at a loss, which is not correct.

(Testimony of William S. Bliss.)

The Member: He said made at a loss or at a stand-off, as I understand the question.

Mr. Helvern: That is not in evidence, either. Substantial quantity of the sales were made at a profit. Some \$400,000 worth, as brought out by the evidence of Mr. Bliss.

The Member: All right. I will sustain the objection.

Q. (By Mr. Murray) The evidence shows, Mr. Bliss, that in 1913 the Petitioner company here sold 640 acres of land to a man by the name of Detert.

A. Yes.

Q. It is Section 25, 13 18.

A. I know where it is. [147]

Q. You know where the land is. What is the character of it?

A. Well, it runs up on State Line Peak or Monument Peak, I think, and it was nearly all rough mountainous land. There was a small acreage near the road going to Carson Valley, which was pretty fair. It had a little timber on it.

Q. A little timber on it?

A. On that part.

Q. Well, Section 25 never was cut over, was it?

A. I don't think it was.

Q. In fact it isn't cut over today?

A. I don't think so.

Q. Then it is virgin timber, isn't it?

A. Oh, not all of that. Maybe 40 acres.

Q. Your testimony is that only 40 acres is virgin timber?

(Testimony of William S. Bliss.)

A. I don't know. I know the situation there. The very lower edge has some timber on it.

Q. Assuming that it was in virgin timber, to some extent anyway, whereas the lands here in question that were sold to Whittell in 1938 were all cutover land as has been stipulated——

A. (Interposing) Not all cutover.

Q. Well, practically. Would you contend that that one section of land in virgin timber had no more value than the cutover lands?

A. It wasn't worth much of anything.

Q. That is your testimony? [148]

A. This cutover land ran down to the shore that we sold to Whittell.

Mr. Helvern: There is no evidence to show that practically all of the Whittell land was cutover as—

Mr. Murray: (Interposing) I beg your pardon. I answered the Petition which shows that it was all cutover land.

The Member: The witness has answered the question. There is nothing before me. Go ahead.

A. (Continuing) It wasn't all cutover.

Q. (By Mr. Murray) What would you say with respect to the Carson-Tahoe lands in 1915 as distinguished from 1912? I mean in comparison with 1912 generally?

A. Oh, Lord! I can't tell you now. It is a good many years ago.

Q. Do you admit that the land ever became more valuable than you thought it was in 1913?

A. Some of it did.

(Testimony of William S. Bliss.)

Q. Well, all of it did, didn't it?

A. I wouldn't say that.

Q. You wouldn't say that? A. No.

Q. What part of it did?

A. Well, I didn't take out any special part.

Q. Isn't there any classification of it that you would say [149] became more valuable since 1912?

A. You must remember that there were 44,000 acres there that I am passing judgment on.

Q. Well, I call your attention to Zephyr Cove.

A. Yes.

Q. Did that have any more value, in your opinion, in 1915 than it had in 1912?

A. I think it was the same value.

Q. When is it your testimony that it began to increase any in value?

A. I don't know that I testified to that.

Q. No, but I am asking you, though. You lived in or around there all the time, didn't you?

A. Yes, at Glenbrook.

Q. Well, wouldn't care to say when you thought such property as Zephyr Cove began to increase in value?

A. Oh, no. No more than any other forty acres of the 44,000.

Q. It is your testimony that Zephyr Cove isn't any better than the rest of the land there?

A. Sure! It is better than most of it. It is on the beach.

Q. Well then, do I take it that you don't care

(Testimony of William S. Bliss.)

to say when that Zephyr Cove began to get more valuable than it was in 1912?

A. No, I couldn't say that.

Q. I see. What was the condition of the roads past Zephyr [150] Cove and between Glenbrook and Nevada State line in 1912?

A. Nothing like they are now. They are fine roads now.

Q. When did they become fine roads?

A. Oh, seven or eight years ago, maybe.

Q. Somewhere in 1934 or '35? A. Yes.

Q. Before that what were they like?

A. Well, they were sand roads, gravel roads, ordinary roads.

Q. What were they like in 1912 and '13?

A. Horse-and-buggy roads.

Q. Well, in 1912 and 1913 what were they like?

A. That's what they were like, as I remember.

Q. As you remember. Now, I understood you to testify this morning that the Fulstone sales in 1920, '22, '23 and '24, that there was something unusual about those sales. What was unusual about them?

A. Well, I don't know about them being "unusual". That land was a good deal like that Detert land. It ran up on the peak.

Q. Was it in timber?

A. No. No timber that they could get off.

Q. I think some of the sales to Fulstone were on the lake. For instance——

(Testimony of William S. Bliss.)

A. (Interposing) Oh, yes. That's right. But I am talking about the land back of Glenbrook.

Q. I am talking about the sale. [151]

A. There were two or three sales to Fulstone.

Q. I will direct your attention to the sale of the place that was later called Skyland in 1923.

A. Oh, yes.

Q. Was there anything peculiar about that sale to Mr. Fulstone?

A. Fulstone was after me to sell it—no, he wasn't. He was talking about it. He had a little money, and the Company wanted to sell it and to get him to buy it. I said that I would agree to go in with him. The two of us were to buy it.

Q. Oh, I see.

A. Then we bought it and I had this trouble with Murphy and I turned my interest over to the Company, this Company.

Q. Your interest to Skyland?

A. The Skyland; and the Company and Fulstone sold it for \$18,000.

Q. Well, when did your trouble with the Company begin? I thought you said it was 1926 when that happened, in the Malley deal?

A. I guess it was.

Q. Well, this sale was in 1923, according to the evidence.

A. Well, it ran on. I turned it over in '26 when I began that suit.

Q. When it was first sold to Mr. Fulstone, then, you were in on it with him, is that it?

(Testimony of William S. Bliss.)

A. Yes. [152]

Q. And do you remember what was paid for the Skyland? A. No, I don't.

Q. It was \$9,000, wasn't it?

A. I don't know.

Q. Well, I got the impression that you said it was at very depressed prices or something like that.

A. I may have referred to some of the other Fulstone sales, I don't know.

Q. Oh, I see. With respect to that one the \$9,000 was probably a fair price for it, wasn't it, in 1923? A. No, I don't think it was.

Q. Well, you wouldn't have been acting for the Company and making a sale and taking an interest in it at something less than the value, would you?

A. No. But I wanted to make the sale and the Company wanted to make the sale, and so we made it and then we talked it over with Fulstone about turning it over to the Company.

Q. Did the Company know that you were in it at the time?

A. Oh, yes. I wrote them about it and told Murphy to talk to Fulstone and to tell Fulstone, if he would buy it, I would go in with him.

Q. Could you have sold it to anybody else for any more at that time?

A. I don't know about that time.

Q. Well, you don't think you could, do you? [153]

A. Well, shortly afterwards it sold for \$18,000.

Q. Very shortly? A. Yes.

Q. A few months, wasn't it?

(Testimony of William S. Bliss.)

A. Yes. In '26, I believe, when I had my racket.

Q. Oh, three years later?

A. I think so, because I remember turning it over to the Company when I began that suit.

Q. Were you a party to the sale of it to the boys' school, Captain Daly? I think he is the one who bought it?

A. No. Fulstone and the Company sold it.

Q. Fulstone and the Company. Mr. Bliss, what was the first development on Lake Tahoe? I mean, what section was developed first from the standpoint of recreation land?

A. Oh, they had hotels and parks up there away back in the '70s. Old Hank had them.

Q. Whereabouts? A. Over at Tallac.

Q. Tallac is on the California side, isn't it?

A. Yes, the road from Placerville to Virginia, when the Virginia Comstock was started, ran right by the edge of the lake or back of the lake, and they had resorts and affairs in there away back in the '60s.

Q. When did Tahoe City begin?

A. I guess that was in the '60s. [154]

Q. That is in the northwestern part of the lake, isn't it? A. Yes.

Q. Well, that was pretty well developed from 1913, wasn't it, that section in there around Tahoe City?

A. They had built the tavern and got the little narrow gauge road in.

Q. You had a railroad in there? A. Yes.

(Testimony of William S. Bliss.)

Q. Was there any other way for any large number of people to get into the lake at all at that time?

A. They came in by stage.

Q. Into where?

A. Glenbrook and Tahoe from Placerville. Old Hank Monk drove the stage from Carson to Glenbrook.

Q. If they came into Glenbrook by stage where did they have to come from?

A. Well, they came from Carson to Glenbrook.

Q. From Carson, Nevada? A. Yes.

Q. There was no way to get from Tahoe City around to Glenbrook in those days, was there?

A. From Truckee.

Q. I say there was no way to get around the lake?

A. Oh, yes. Steamer.

Q. On the lake. But what I am trying to bring out is, if I [155] understand it right, that there was no road from Tahoe City around Glenbrook to the north of the lake in those early days, was there?

A. I have forgotten when that Emerald Bay road was put in, but that was quite early.

Q. That is on the California side?

A. Oh, you mean Nevada?

Q. Yes.

A. The road ran from Glenbrook right to State Line, south end of the lake and down to Placerville.

Q. Yes. But there was no road around the north end of the lake until in the 1920s, was there?

A. I guess not. Oh, I know there wasn't.

Q. Well, is it your opinion that lands on the lake

(Testimony of William S. Bliss.)

front over near Tahoe City—I will withdraw that.

Would you say that any of the land here in question, the land that was sold to Whittell, could be compared in any favorable way at all with lands over near Tahoe City in 1913 from the standpoint of value for recreation purposes? A. Oh, no.

Q. No comparison?

A. No. In 1913 we were getting one hundred to two hundred dollars a front foot around Tahoe City.

Q. Yes. I see. Now, I would like to ask you something about a quiet title suit by the Carson-Tahoe Company in 1916 to try to [156] quiet title to a large amount of property. A. Yes.

Q. Do you remember that?

A. Yes. About 10,000 acres.

Q. That quiet title suit involved some of the land here in question in this case, did it not?

A. Yes, I am sure it did.

Q. What was the necessity for that and the reason for it?

A. Well, I had a land attorney named Austin, and we were sizing up the land and found that somebody had signed their initials and not their full name and then had turned it over with the full name, and so on, and we decided that the title wasn't quite good enough in that case. And so we started in and found that there were about 10,000 acres out of the 44,000 that should be quieted, and brought suit to quiet title. Little defects in the titles and so on.

(Testimony of William S. Bliss.)

Q. Well, do you recall about when that was?

A. I guess '16; somewhere around there.

Q. '16 to '19, wasn't it? Somewhere in there? So the title to some of this property that we are talking about here in this suit was really not cleared until that suit was culminated, is that right?

A. That is true. We had been paying taxes on it, though, right along.

Q. Now then, I would like to ask you about the difficulties [157] you had with the Company in 1926 and thereabouts. I understood you to say this morning that about that time the—well, I will first ask you, Who were the directors of the Company then besides yourself?

A. Well, there was, in the first place, when I first went in there, there was Taylor—I have forgotten his initials—he is the nephew of Mills; and H. M. Yerington and myself were the three directors. And then Taylor died and I think a man named Cannon took his place.

Q. That was away back, wasn't it? I mean, that was before 1913.

A. When do you want?

Q. I would really like to know who the directors were when you had the difficulty in 1926.

A. Oh, '26. Well, Ed Yerington—E. B. Yerington—and Frank Murphy.

Q. And yourself?

A. And myself.

Q. Do I understand that they wanted to sell the Company's lands or some of them?

A. Oh, wait a minute! Wait a minute! Ed Yerington died. It was Daugherty.

(Testimony of William S. Bliss.)

Q. That's Daugherty, Murphy and yourself——

A. (Interposing) Were the directors.

Q. By the way, you called it "trustees". Is that the same [158] as the "directors"?

A. We considered it the same, yes.

Q. Then, do I understand that they wanted to sell some lands of the Company and you thought that the price was too low? Is that it?

A. Yes.

Q. That is what the difficulty was about?

A. Yes.

Q. You spoke——

A. (Interposing) Murphy insisted on selling as well as myself. I was the only one to do any selling then in the beginning. Then he had this friend Malley and wanted to sell this land to him in Zephyr Cove, and I wouldn't sell it. So he and Daugherty put Murphy, the vice-president, in as a salesman too. Then, he sold some other land—not the Zephyr Cove land, land around Cave Rock—to Malley and I objected to it and brought suit and enjoined them.

Q. What was the result of that suit? As I understand it, the minutes you read this morning stated that at that time the minute was drawn it hadn't been culminated yet? A. No, it hadn't.

Q. Did the Court finally give a judgment in it?

A. No. Didn't pass on it at all. After we traded that stock for the land, why, it was dismissed.

Q. It resulted in your getting out, though, this suit? [159] A. Yes.

(Testimony of William S. Bliss.)

Q. Do you remember what offer was made for Zephyr Cove at that time?

A. No, I don't remember. But I had it down on the '13 list there.

Q. Well, were they trying to sell it for less than you had down on the '13 list?

A. Oh, yes. When I make the statement that it was for less, we had a lot of talk over it. There were other things concerned. I think there were water rights and different things mixed up in it.

Q. Mr. Bliss, I show you what purports to be the Federal Corporation Income Tax Return of Carson and Tahoe Lumber and Fluming Company for the year 1918 and ask if that is your signature on this Return? A. Yes, sir.

Mr. Murray: I offer this Return in evidence as Respondent's Exhibit.

Mr. Helvern: No objection.

The Member: It will be received in evidence as Exhibit I.

(The Income Tax Return so offered and received in evidence was marked "Respondent's Exhibit I", and made a part of this record.)

Q. (By Mr. Murray) I show you what purports to be the Federal Corporation Income Tax and Profit Tax Return for the [160] calendar year 1919 of the Carson and Tahoe Lumber and Fluming Company, and ask you if that is your signature attached on that Return. A. Yes, sir.

Mr. Murray: I offer this 1919 Federal Income Tax Return in evidence as Respondent's Exhibit.

(Testimony of William S. Bliss.)

Me. Helvern: No objection.

The Member: Accepted in evidence.

The Clerk: J.

(The Federal Income Tax Return so offered and received in evidence was marked "Respondent's Exhibit J" and made a part of this record.)

Mr. Murray: If your Honor please, may I have permission to withdraw all the income tax returns that are put in for purposes of photostating and substituting photostats from them?

The Member: Leave granted.

Mr. Murray: That is all.

Redirect Examination

Q. (By Mr. Helvern) Mr. Bliss, you have discussed the relative value of the lands of the Company at various times. In your testimony this morning you stated that in 1898 the land—all merchantable timber had been cut off? A. Yes.

Q. Was there any underbrush, or what was the nature of that [161] land after it had just been logged off in 1898?

A. Oh, there was brush, but it was pretty well stripped.

Q. Stripped. Not much underbrush?

A. Oh, I don't know. There is brush there, but in many places they have cut cord wood, and when they cut cord wood they took everything that is in sight.

Q. Mr. Bliss, what changes if any, had occurred in the nature of that land in the years that had inter-

(Testimony of William S. Bliss.)

vened between the years 1898 and 1912 when you made your appraisal, if any changes had occurred?

A. There was a wonderful growth of second growth. It came up as thick as your fingers all over the country.

Q. In your opinion, Mr. Bliss,—

A. (Interposing) And a good deal of second growth had been coming. Some of that second growth was 50 years old.

Q. 50 years old?

A. But just the last part of it, it was cutover. It was wonderful growth.

Q. Did that occur in the period from 1898 to 1912 particularly, or don't you remember?

A. Oh, yes.

Q. It occurred in that period?

A. Well, as they cut the timber off, second growth came up. Now, they had been cutting timber for quite a while.

Q. How long does it take just getting through cutting timber [162] from the land to reach that period? How many years, would you say, you as a timber man?

A. Ten, twelve years, I suppose.

Q. Ten or twelve years?

A. It would be 20 feet high, in groves.

Q. In your opinion was the land made more valuable by the growth of this second growth?

A. Oh, absolutely. They wouldn't touch it where it was stripped.

Q. They wouldn't touch it in 1898?

(Testimony of William S. Bliss.)

A. No one would think of touching it.

Q. You considered it much more valuable in 1912? A. Yes.

Q. Mr. Bliss, they introduced a letter addressed to you by the Federal Government in 1924 in which you were asked certain questions by the Federal Government. Has the Federal Government ever called upon you as to your opinion of lands in the vicinity of Lake Tahoe?

Mr. Murray: I object to that, if your Honor please, unless it applies to this case. If it applies to anything else it is incompetent, irrelevant and immaterial.

Mr. Helvern: Your Honor, it does apply to this case.

The Member: Overruled. He may answer.

Q. (By Mr. Helvern) All right. Did the Government ever ask your opinion about the valuation of lands? [163] A. What about '24?

Q. Well, what about '24? Did they ask your opinion in '24?

A. In '25 I went over it with Allen.

Q. You did?

A. I don't remember '24 much.

Q. Well, in '25 Allen was a revenue agent, was he? A. Yes.

Q. And you did go over it. And at his request?

A. Yes, absolutely.

Q. And you have a letter from the Government asking your opinion about these lands, have you not?

A. I think I have.

(Testimony of William S. Bliss.)

Q. Did the Government accept your opinion? You expressed an opinion, did you not?

Mr. Murray: If your Honor please, I must object to these questions as leading. He is testifying.

A. I don't know what letter you have reference to.

Q. (By Mr. Helvern) All right. Mr. Bliss, you have testified that the Government did ask your opinion with respect to valuations.

A. In talking over with Allen he asked my opinion and we went over the thing thoroughly. I think we were two weeks at it.

Q. Then, if the Government asked your opinion did they ever to your knowledge accept your opinion with respect to valuation of timber lands in the vicinity of Lake Tahoe?

A. Yes, sure! They accepted it. It resulted in the report.

Mr. Murray: Objection to that.

The Member: I think it is proper. I will overrule the objection. It bolsters up his qualifications as an expert, not that it has anything to do with estopping the Government at all, but—

Mr. Helvern: (Interposing) This is solely with respect to the qualifications of Mr. Bliss to pass upon these values.

The Member: All right.

Q. (By Mr. Helvern) Then, with that in view the Government did obtain your opinion with respect to a valuation of another large piece of land in the vicinity of Lake Tahoe, did they not?

This touches upon the qualifications.

(Testimony of William S. Bliss.)

Mr. Murray: I object.

The Member: The thing is, counsel, it is so terribly leading. And I will have to sustain the objection on that ground.

Mr. Helvern: Yes.

Q. (By Mr. Helvern) In the case that I mentioned in which the Government did ask your opinion——

A. (Interposing) What?

Q. In the case in which you stated that the Government did [165] ask your opinion——

A. (Interposing) Yes.

Q. (Continuing) ——and you gave them your opinion, did you? A. Yes.

Q. Did they accept it or reject it?

Mr. Murray: If your Honor please, that was the question that was eliminated, your Honor please.

The Member: The question now is, Did they accept it or reject it?

Mr. Bliss, state whether or not at any time you made an appraisal for the Government of any other property?

The Witness: Except the lumber company's?

The Member: Yes.

The Witness: I may have, but I don't remember.

The Member: He doesn't remember.

Mr. Helvern: Well, if your Honor please, the direct question was asked of Mr. Bliss, and perhaps it was the way the question was put. Mr. Bliss was called upon by the Government in another case involving approximately the same amount of land.

(Testimony of William S. Bliss.)

Mr. Murray: If your Honor please, I object.

The Member: Well, the witness says he doesn't remember any such thing.

Mr. Helvern: May I ask one more question?

Q. (By Mr. Helvern) Mr. Bliss, did the Government ever reject, or did the Government ever accept your opinion with [166] respect to any valuations of lands in the vicinity of Lake Tahoe?

A. I remember they accepted it all.

Q. They accepted it all? A. Yes.

The Member: Do you remember ever making an appraisal for the Government for any land besides your own company land?

The Witness: I might have. The Tavern Company.

The Member: The Tavern Company?

The Witness: Yes. The Lake Tahoe Railroad & Transportation Company.

The Member: Do you remember anything about that transaction?

The Witness: No, I don't.

The Member: All right.

Q. (By Mr. Helvern) You made the statement "Your" Company land. Do you refer to Carson land or to Bliss Company land?

A. No, Carson-Tahoe.

Mr. Helvern: That is all.

The Member: That is all, Mr. Bliss. Thank you.

Witness Excused.

The Member: Call your next witness.

Mr. Helvern: I will call Mr. Comstock. [167]

MR. HARRY O. COMSTOCK

a witness called on behalf of Petitioner being first duly sworn, testified as follows:

The Clerk: State your full name, please.

The Witness: Harry O. Comstock.

Mr. Helvern: May I proceed, your Honor?

The Member: Yes, sir.

Direct Examination

Q. (By Mr. Helvern) Mr. Comstock, what is your age? A. Born in 1874.

Q. And where were you born?

A. Carson City, Nevada.

Q. And where have you lived most of your lifetime? A. Lake Tahoe.

Q. Do you live there now, Mr. Comstock?

A. Yes, sir.

Q. What is your business, Mr. Comstock?

A. Hotel.

Q. And what particular hotel are you owning now? A. The Hotel Brockway.

Q. That is where?

A. Located on the north end of Lake Tahoe.

Q. Mr. Comstock, what other hotels have you owned in the vicinity of Lake Tahoe? [168]

A. My father took a lease of the Lucky Baldwin

(Testimony of Harry O. Comstock.)

property at Tallac in 1880 and we operated that 36 years.

Q. Do you know Mr. W. S. Bliss?

A. Whom?

Q. Pardon me. First, Mr. Comstock, what is the location of Tallac?

A. Tallac is on the south end of the lake.

Q. On the south end of the lake?

A. That's right.

Q. Is that in California or in Nevada?

A. California.

Q. Close to the line, is it not?

A. About six miles.

Q. How long have you known Mr. W. S. Bliss?

A. Most of my life.

Q. You state that you are a hotel man. Did you ever own and sell any properties?

A. Yes. We have always——

Q. (Interposing) In the vicinity?

A. We have always dealt in real estate, because we operated in connection with our hotel, cattle business and lumber business.

Q. Was that your own property or for someone else?

A. No, our own property. And we also—with the Hotel Tallac there were 17 acres of land belonging to the Baldwin estate, or Baldwin at that time. It was under our control. [169]

Q. Mr. Comstock, I have here some notes which you have written in regards to your transactions of certain pieces of property. Will you recite and

(Testimony of Harry O. Comstock.)

tell in your own language what sales of land you made in the vicinity of Lake Tahoe and about where they were and at what price they were sold and when?

A. Well, I have a pencil memorandum of those and you have them there. If you want to ask me about them—— (Pause)

Q. These memoranda were made by you just before lunch?

A. I made them, right. But they were made on the back of a letter written by your office. I don't know whether you want to turn it in or not.

Mr. Murray: I don't object to the witness refreshing his recollection.

The Member: He may refresh his recollection.

Mr. Helvern: He spent considerable time in the Court room refreshing his memory and writing these down. I just want to refresh the witness's recollection.

The Member: All right.

Mr. Helvern: You have no objection?

Mr. Murray: No objection.

Q. (By Mr. Helvern) You may keep these.

A. May it please your Honor, this is a little bit at random. I have skipped around on this, but I will make it reading as I have it here, if it is O.K. with the Court. [170]

1913 was the last year that my partner and myself operated Tallac. We moved to the other end of the lake and gave up our lease, and we run our own dairy and killed our own beef and rented considerable land besides the land we owned. And

(Testimony of Harry O. Comstock.)

then after leaving Tallac this land was for sale. I sold J. T. Scott in 1918 eighteen hundred acres of land for \$19,000. Part of this land was meadow land and most of it was cutover timber land. I sold two——

Q. (Interposing) Now, Mr. Comstock, would you state about the location of this land?

A. Yes.

Q. In each case?

A. I can give you the location. This land was about seven miles back from Lake Tahoe, what is called the Little Truckee River, and some of it was over back of what is known as Meyers Station toward the mountains of Job's Peak and Freel Peak, and it used to be a sawmill called Woodburn Sawmill located on this land.

I next sold a few months later 685 acres to Barton and Keiber for \$10,000. This is located also on Little Truckee River, but about three miles nearer Lake Tahoe.

Mink Harbor located in Nevada just around the point from Brockway——

Q. (Interposing) Just a moment! Will you explain the general character of these lands as you go along? I think you will [171] save time if you do.

A. I will go back to the 685 acres?

Q. Yes, sir.

A. About half of that was meadow land and the other half was timber land and it had been cutover, but when we speak of "cutover land" in the early days they didn't go in as they go today and take

(Testimony of Harry O. Comstock.)

everything. They took only the choice timber. Lots of places where timber land had been cutover you wouldn't know it had been cutover if the stumps had not been pointed out to you.

I had an option from Will Bliss on 37 acres of land known as Mink Harbor in Nevada. This option was about 1910—let's see! Wait a mintue! This option was about 1915, and I didn't exercise.

Q. How many acres? A. 37 acres.

Q. 37 acres.

A. And this was rocky, water front land with a little bit of a harbor; very hilly, but nicely timbered.

Q. What was the option price?

A. \$7,500. I didn't exercise the option because I didn't have the money to do it with. I believed in it.

Q. What happened to that land? Do you know of your own knowledge?

A. Yes. It was sold a little later by Mr. Bliss to Mrs. Moore, and I am not sure about the price, but I think it [172] was about twice of what my option called for.

Mr. Murray: If your Honor please, I ask that that be stricken.

The Member: The latter part will go out. The other part is already in evidence.

Mr. Helvern: It is already in evidence but I am trying to qualify this witness as, among other things, a person able to judge the values of land.

The Member: All right.

(Testimony of Harry O. Comstock.)

Q. (By Mr. Helvern) Proceed.

A. Bought from Dave Park, located in Nevada, State line, two acres of land about 1910 for \$1,000. I sold it a few years later for \$3,000.

Q. A few years later? A. Yes.

Q. About when did you sell it?

A. I think about 1915.

Q. Yes, sir. What kind of land?

A. I beg your pardon?

Q. What was the nature of that land, Mr. Comstock?

A. That was beach frontage, 400 feet on the beach and 200 feet in depth.

Q. 400 for the front; yes, sir.

A. When we gave up our lease at Tallac we had a lot of property in there and Anita Baldwin bought from us over 200 [173] acres of land on the line between Tallac and on the west side of Fallen Leaf Lake, and the price was—some of it was \$15 an acre and some of it was \$20 an acre.

Q. What was the date that this land was sold, Mr. Comstock?

A. It was just average timber land with a little bit of meadow and aspens.

The Member: What is the date when it was sold?

Q. (By Mr. Helvern) The date, the year?

A. It was sold in 1913.

Q. 1913. And it was meadow land?

A. Very little meadow land; mostly timber; gentle rolling land. It was nice land, and what made it attractive was that it was part of it on the west

(Testimony of Harry O. Comstock.)

shore of Fallen Leaf Lake where Anita Baldwin eventually built a private home.

Q. Was it or was it not cutover timber land?

A. No, sir.

Q. Not cutover? A. Not cutover.

Q. Was that timber available for cutting, in your opinion?

A. Why, I don't know what you mean by that. It could be.

Q. Could it be lumbered off?

A. It could be lumbered off. The ground is accessible, but it has never been lumbered off. We wouldn't lumber it off and the Baldwin people wouldn't lumber it off.

Q. Why not? [174]

A. Because it is too beautiful as it is.

Q. And would it be feasible to lumber it off at a profit on that parcel?

A. Oh, yes. The land was quite level.

Q. I see.

A. In 1915 I sold 160 acres to W. W. Price, who operates Fallen Leaf Lodge up in the north end of Fallen Leaf Lake. This land did not touch Fallen Leaf Lake. It was back of the lake a little ways. There was some quite nice in timbers and a lot of it was quite rough and rocky, and we sold this for \$15,000.

Q. How many acres, Mr. Comstock?

A. 160.

Q. Rough and rocky land, I understood you to say?

(Testimony of Harry O. Comstock.)

A. Yes. And although it was nearer Fallen Leaf Lake we did not own lake frontage. It was owned by a man by the name of Swissel.

Q. No lake frontage?

A. No. It was back about two or three hundred feet from the lake. I am not sure of this date, but the approximate date was in 1917, I sold to A. L. Richardson what is now known as Richardson 195 acres of land, 295 feet of water front, for \$35,000.

Q. And what is the location of Richardson's Camp?

A. That was east of the Tallac property and what was then the [175] Tevis property, and is now the Pope property.

Q. And sold for \$135,000. And what was the nature of the land? A. Sold for \$35,000.

Q. Oh, pardon me. \$35,000. Correction.

A. I also sold further east of that along a strip of the beach, which was not particularly good land as it is subject to overflow in high water, about 1300 feet running from 150 to 200 feet in depth, to a Mr. Jameson for \$10,000.

Mr. Murray: What year did you say that was, please?

The Witness: That to Jameson was sold before I sold to Richardson. I think it was 1915. Let's see! That was 1914, sir.

Q. (By Mr. Helvern) Was that land subject to overflow?

A. It was a strip of beach land with marsh land

(Testimony of Harry O. Comstock.)

back of it and the lake in front of it and a little bit dangerous to build on, although there are nice homes on it today.

Do you want the rest of this?

I sold to Walter Heller right alongside of Richardson's 200 feet x 1500 feet in depth in 1914 for \$17,000.

Q. What was the nature of that land, Mr. Comstock?

A. Waterfront and a very fine beach.

Q. A fine beach?

A. Fine beach, fine timber; never been cut off.

Q. That didn't have any swamp land or overflow?

[176]

A. No.

Q. The next parcel, Mr. Comstock?

A. Now, to help you establish values, a Mr. Alvison, who was my father-in-law, bought the place I am now operating in 1900, Brockway; and the following year he bought 1100 acres from a man by the name of McKeown, who was in Alaska, for a dollar an acre plus the taxes that was against it, which made it cost him about four dollars an acre when he finished with it.

Q. This was in 1900? A. 1901 he bought it.

Q. And the location of Brockway is where?

A. At the extreme north end of the lake. And this property was west of Brockway property adjoining 400 acres owned by the Central Pacific Railroad, which my partner and I bought later. We bought this 400 acres from the railroad people in

(Testimony of Harry O. Comstock.)

'24 for \$40,000. But going on, this McKeown property——

Q. (Interposing) Mr. Comstock, did I understand that you sold that property?

The Member: No. Bought it.

A. Well, I interrupted by saying that there were 400 acres laying in between it and the Brockway property which my partner and I bought in 1924 for \$40,000.

Q. Oh, \$40,000?

A. \$40,000. Now, going back to the McKeown property, Mr. Alvison bought it in 1901 and he sold it to a firm in [177] Sacramento, and I am not—I can't remember the full name, but Breuner, the furniture man, was interested. And it was sold in 1910 or nineteen—or early 1911 for \$44,000.

Q. How many acres were sold for that price?

A. 1100.

Q. Sir? A. 1100.

The Member: 1100 acres.

Mr. Murray: What year, please?

The Witness: In 1910 or early 1911. That's all, excepting Brockway. We put in a subdivision there and sold off a lot of land and lots, which wouldn't be of any value to you gentlemen.

Mr. Murray: I am going to ask if the witness can go a little slower. I can't keep up with him, please.

The Witness: I am sorry. I would be glad to repeat anything.

(Testimony of Harry O. Comstock.)

Mr. Murray: I have lost out entirely on that 1100-acre sale.

The Witness: It was bought in 1901 for a dollar an acre plus the taxes against it. Do you want me to repeat it, sir?

The Member: It was sold in 1911 or 1912 for \$44,000.

The Witness: \$44,000. Correct.

Q. (By Mr. Helvern) Mr. Comstock, was that land accessible [178] by any road in 1912?

A. How is that, sir?

Q. Was that land that you just referred to accessible by any road?

A. Yes. There was a road from Truckee to Brockway, which was a very, very old road, an old wagon road; and that road had been in existence, oh, prior to 1900. I don't know how many years prior to that.

Q. Those were all the sales?

A. No. That road was in existence—I know of my own knowledge of its being in existence in 1894 or '95.

Q. Did that road proceed beyond Brockway?

A. No, sir.

Q. It did not. And those were all the sales that you were personally acquainted with?

A. How is that?

Q. Those were all the sales that you yourself consummated, is that true? A. The sales?

Q. Those are all of your sales, Mr. Comstock?

(Testimony of Harry O. Comstock.)

A. All of the sales of any large land holdings.

Q. Yes. Mr. Comstock, were you in making these sales yourself, and being there at the time familiar with the value of lands other than those which you yourself sold?

A. Well, you can see from this statement that my partner and [179] I were interested in lands, and if there were any lands for sale around Tahoe at any time we were always interested in it, and kept pretty well posted on real estate values.

Q. I believe you mentioned one sale to a man named Scott? A. Yes, sir.

Q. And that was in 1913. That was land at the south end of the lake?

A. Yes, sir; about seven miles from Lake Tahoe on the Little Truckee River.

Q. This sale of land to Mr. Scott, do you know of any other lands in that vicinity that I might compare the nature of that land with the nature of any other lands?

A. Well, there was a piece of land of about 600 acres laid between the property that I sold to Scott and the property that I sold to Keiber known as the Tim Barton place.

Q. Jim Barton place? A. Tim Barton.

Q. Yes, sir.

A. And I tried to buy it. I offered more for it than I sold my land for, and adjoining me on the west was a place called the Abe Jewell place which I offered ten dollars an acre for, and it was timber land and meadow land. And they refused my offer.

(Testimony of Harry O. Comstock.)

Q. When did you make this offer? In what year about?

A. Before we left Tallac; somewhere around 1912; 1910 or '12. [180]

Q. Yes. Mr. Comstock, you have been in Court this morning and you have heard the testimony of Mr. W. S. Bliss?

A. Yes, sir.

Q. And at the request of Mr. Bliss you have during the past two weeks reviewed the map showing the lands which Mr. Bliss appraised, and you have also reviewed, I believe, a copy of the appraisal made by Mr. Bliss of those lands, have you not?

A. Yes, sir.

Q. Mr. Comstock, I hand you a map designated "Exhibit No. 8". This is Petitioner's Exhibit No. 8 which was produced in testimony this morning. Have you previously examined a copy of that map?

A. Yes, sir.

Q. And what is indicated by that map?

A. This is the map of the land held by the Carson and Tahoe Lumber and Fluming Company at Tahoe.

Q. Yes. I hand you, Mr. Comstock, Petitioner's Exhibit No. 7, and contained in that Exhibit No. 7 is a sheet called "Exhibit A", and I ask you if you are familiar with that sheet of land and to describe it.

A. Well, I would have to refer to the map to get these numbers, but your Lots 4, 5, 6, 7, 8, 9, 10, 11 and 12 are the lots at Zephyr Cove in here.

(Testimony of Harry O. Comstock.)

Q. Yes sir.

A. And I am very familiar with them. Lots 1, 2 and 3, I pre- [181] sume, are north of Glenbrook. Is that correct?

Q. You will find them on the map.

A. That's right.

Q. You are familiar with 4, 5, 6, 7 and 8, are you?

A. Yes, sir.

Q. And what other blocks are you familiar with as to the nature of the land?

A. Well, this is on the south end (Indicating).

Q. South end?

A. Yes. You see, I leased a good deal of this land at the south end of the lake from the Carson and Tahoe Lumber and Fluming Company for a good many years to run cattle on. I leased nearly all of that land from them.

Q. And with that before you I would like to ask you a few questions about this. Do you recognize the figures shown on that Exhibit A in your hand in the minutes as being the values ascribed to that land by block number by Mr. W. S. Bliss?

A. Yes, sir.

Q. You do. And you recognize the black lines on that map as being the lines enclosing every one of these blocks?

A. That's right.

Q. You said you were familiar with the location of some of these lands. I will ask you if you are familiar with the land in Block No. 5 shown on that map. [182]

A. Yes, sir.

(Testimony of Harry O. Comstock.)

Q. Block No. 5 is indicated as having 2265 acres and Mr. Bliss ascribed a value of \$23,500 to that piece of land.

A. Well, how much water front has he got with that?

Q. No water front? A. None at all?

Q. No, none at all. \$23,500 was his estimate of that land as of April 7, 1912.

A. For how many acres?

Q. 2265 acres in that particular piece of land. What is your opinion on that appraised value?

A. Well, that land is land that is all suitable for home sites and it's rolling land that has been timbered over, but not heavily timbered. And I think that I can answer that question in a general way for you, with your permission.

Q. In your own words, Mr. Comstock.

A. I believe and have believed it and have bought land at Tahoe, that anywhere in Tahoe land that is not too rocky and has timber on is worth anywhere from six to ten dollars an acre. And I base my valuation on the wood and timber on it and the summer home possibilities. I have always—when I say “always” I am taking in a lot of territory—but I have always thought that there was a limited amount of shore line on Lake Tahoe and should be held at a fairly good value. And I proved my value by getting the price for [183] mine that I have stated.

The Member: Now, of course, I understand that this particular property had no shore line?

(Testimony of Harry O. Comstock.)

Mr. Helvern: No shore line.

The Witness: No shore line.

The Member: And you realized, Mr. Witness, that this question is asked concerning your opinion about an appraisal as of a certain date in 1912, not what it is worth now.

The Witness: I realize that. And I will answer that this way: There was a good road, as good roads go in those days, from Carson City to Glenbrook, from Glenbrook to Tallac and from Tallac to Placerville. It was the road that was traveled in early days in stages. It went from Placerville to Virginia City. It was a road that automobiles could travel. And when I state the values of land there thinking of those days I am thinking of correspondingly higher price in California than anywhere on Lake Tahoe, although the market was not quite ready to take it up at that time.

The Member: Well, I don't understand that. You say it probably had value but the market wasn't ready to take it up?

The Witness: I will qualify that by saying this to that: When I was a youngster there my playmates were Indians, and it had developed and gradually developed that the demand for land had increased, and you couldn't touch California land of the same character as that for a great deal [184] more money.

The Member: When you say "California" do you mean the land on the California side of the lake?

(Testimony of Harry O. Comstock.)

The Witness: That's right. The California side was developed first.

The Member: Oh, I see.

Q. (By Mr. Helvern) Was that on account of the accessibility of the California land and the non-accessibility of the Nevada land? Did that have something to do with your answer?

A. No, I don't think it was accessibility. It is like a sub-division starts in one part of town that is just as accessible as another part of town, but somebody hasn't opened it up.

Q. Yes. Now specifically with regard to this Block No. 5 containing 2265 acres which Mr. Bliss valued at slightly more than ten dollars per acre, taking it by and large do you think his valuation was too great or too small in your own opinion?

A. Well, it wasn't too great because I am going to give you my reason why, if I may.

Q. That is all right.

A. Because it is located very near Glenbrook resort, which also increases the value of land for home privileges and home building, and this land is nicely timbered and fairly level, sloping enough so that a building most anywhere on it would have a view of Tahoe. [185]

Q. Now, if we may pass to Block No. 1, which is shown on the map, and here was Mr. Bliss's appraisal, the value of Block No. 1, the first Block on there, showing the acreage and shore feet——

A. (Interposing) That has 8,250 feet of shore line and 550 acres of land.

(Testimony of Harry O. Comstock.)

Q. Yes, sir. Valued at \$27,500 by Mr. Bliss.

Mr. Murray: How many acres?

The Witness: 559 acres.

The Member: Valued at how much?

Mr. Helvern: Valued at \$27,500.

Q. (By Mr. Helvern) You can find that on the map, and if you are familiar with that particular piece of property, that land, tell me your opinion of that value, No. 1.

A. I know. I am just trying to locate exactly where it is myself.

Q. Do you know the name of this cove?

A. This one is Secret Harbor. I'm not sure. I think that is where the hotel property is located today. I am not sure about that. Glenbrook is away here. This is away north. Glenbrook is down here or down there (Indicating). Just a minute. No, he is further down. This is Secret Harbor.

The Member: How long has Glenbrook been a resort?

The Witness: Glenbrook was a sawmill, Judge, and a [186] big lumber mill. They had three mills there and a little town in until about 1898 when they abandoned the sawmills and tore down the mills, and I think the resort was started there in about 1906, '7, '8.

The Member: Sort of run as a combination ranch and resort?

The Witness: That is correct. And they have a lot of meadows in there.

The Member: Yes.

(Testimony of Harry O. Comstock.)

The Witness: A very lovely location.

Q. (By Mr. Helvern) Mr. Comstock, then you are familiar with that. What would be your estimate of the valuation ascribed to that land in view of your knowledge?

A. Are you asking me my estimate of that land today?

Q. No, in April, 1912 or March 1, 1913, approximately within six months of that date or eight months or nine months of that date.

A. I have never I have never valued any land at Lake Tahoe—and I say “never”—from the time I was active in business at less than ten dollars an acre, unless it was a straight up and down cliff, that was at all accessible. I valued it at a minimum of ten dollars up to a hundred dollars.

Q. As of what date?

A. I made these sales in 1914, 1915 from \$65 to \$85 a front foot. [187]

Q. Mr. Comstock, this land does not have much acreage but it has quite a shore frontage on the lake, and if you are familiar with that——

Mr. Murray: (Interposing) If you Honor please, I will have to ask here that there be no leading whatever, because the man is reading from the Exhibits in evidence.

The Witness: I don't want to see that. You want my opinion. You don't want Mr. Bliss's opinion.

Mr. Murray: That is right.

(Testimony of Harry O. Comstock.)

The Witness: I will be very glad to give it to you. I really don't care if I have that at all.

If I were going to appraise that land at that time I doubt very much if I would appraise that land as high as Mr. Bliss appraised it at that one particular piece, because it is not accessible to a beach. But when you came down to 4, 5, 6, down to 12, I would appraise it higher.

Q. Block 1 you would appraise at something less?

A. I would appraise it at less than ten dollars a front foot, and I would have taken the front footage for a depth of 300 feet for building purposes and then I would appraise the back land at five or six dollars an acre.

Q. And then you would have appraised that land very low. With respect to the shore frontage you would have appraised that at——

A. (Interposing) I would have appraised that land at about [188] \$12,000.

Q. At about \$12,000. There were 8000 feet of shore.

A. All right. That's ten dollars.

Q. Per foot? A. Per foot.

Q. Are you sure of that? That would be \$80,000. Ten dollars X eight thousand is \$80,000. You don't mean that? A. I mean——

Mr. Murray: (Interposing) If your Honor please, the attorney is testifying here.

The Member: Well,——

Mr. Helvern: (Interposing) I am trying to correct the testimony of the witness, your Honor.

(Testimony of Harry O. Comstock.)

The Witness: I will go back and repeat what I said. I won't appraise any land on Lake Tahoe shore line that can be built on, that has a deeper depth to it, less than ten dollars a front foot.

The Member: That would be worth \$80,000.

The Witness: When I said Mr. Bliss, I didn't compute his figures. My mathematics are wrong, but my statement is right.

Q. (By Mr. Helvern) All right. We will pass to Block No. 2. I will say that for your information that that has 3300 feet of shore line and 2210 acres in Block No. 2 as delineated on that map. [189]

A. How much shore?

Q. 3300 feet of shore line.

A. Well, my appraisals of those shore lines you probably wouldn't accept.

Q. We want your opinion, Mr. Comstock, as of 1913.

A. I was selling land, I told you before, at that time at \$75, \$80 a front foot. And my contention is, as I said before, that anywhere on Lake Tahoe shore line where there is good building was worth \$10 a foot if it has reasonable depth.

Q. Yes, sir. Now, with respect to the acreage on that land, 2210 acres, what is your opinion of the average value per acre of that block?

A. Four or five dollars an acre.

Q. Yes, sir. About four or five dollars an acre. And the shore at about \$10 a front foot?

A. Yes, sir.

Q. The next block is Block No. 3. A. Yes.

(Testimony of Harry O. Comstock.)

Q. That has 3120 front feet of shore and 1343 acres of land.

A. Well now, let's see. That's shore there. Some of that shore is rather rocky, rather steep, and from the map here I wouldn't know. And if it is so rocky and steep that they couldn't build on it and get down to the beach, then it [190] wouldn't be worth that amount of money. But a great deal of land around there is quite accessible to the shore. [191]

Q. (By Mr. Helvern) Mr. Comstock, I hand you again Exhibit A, Mr. Bliss's appraisal. You have this map which you have studied previously and during this recess you have refreshed your mind. In your opinion generally throughout that entire appraisal what is your opinion of the total valuation that I refer to as of April, 1912? The total valuation Mr. Bliss stated was \$778,500, and I ask your opinion of that total valuation, considering all of the factors that you are familiar with in that land.

A. I not only today but in years gone by have talked with Mr. Bliss and have gone over his maps with him in regard to valuations, and I have always thought he was most conservative in his values that he placed on land. When I state that, I have been talking land with Mr. Bliss for the last 30 years. We helped lay out the road between Glenbrook and Brockway and I walked that with Mr. Bliss more than a half dozen times on foot. So at those times we discussed values, and it was natural for us to do

(Testimony of Harry O. Comstock.)

it whenever we were together. And I think that Mr. Bliss is always most conservative in his estimates of land values?

Q. May I ask if you think in this particular case he was conservative?

A. Which particular case?

Q. The case of this valuation of those 22 blocks that you have [192] on the map.

A. On the east side of the lake?

Q. Yes, principally on the east side of the lake and partly on the California side. You will note that the block numbers to 11, inclusive, are in the Nevada area and they go around the lake. You will note his values ascribed block by block. To save time I wonder if you could form an opinion as to this particular valuation of Mr. Bliss's?

A. Well, I am very familiar with that land there because we used to come by launch from Tallac to what is now Zephyr Cove on fishing trips and land in Zephyr Cove for luncheons. We did it for many, many years, and that shore line there I am quite familiar with. And, well, we always considered it a very beautiful building site.

The Member: The question is whether his appraisal in your opinion is conservative.

The Witness: Yes, I think it is very conservative.

The Member: And was it conservative as of the date mentioned, 1912?

The Witness: Yes. I think it is conservative on the date mentioned, 1912.

(Testimony of Harry O. Comstock.)

The Member: Any other questions?

A. (By Mr. Helvern) If you will refer on the map to Block No. 13, in the southern end of the lake in California, and tell me which one of the sales or any of the sales that you have mentioned of land comparable with those intervening lots [193] in Block 13, if any of your sales were that sort of land that you would say were comparable lands?

A. The sections of land and parts of sections that we sold were tied in and adjoining a lot of the land to the Lake Tahoe, Sierra Land & Water, whatever it is. It is the land and fluming, isn't it?

The Member: Carson and Tahoe Land and Fluming.

The Witness: There were two of them.

Q. (By Mr. Helvern) Yes, sir. They were adjacent.

A. And that land in there, around Section 20 and 40, 13, was tied in with land that we sold to Scott.

Q. Is that land that you are referring to as the Carson designated there as Block 13? Is that Block 13 that is referred to that you were discussing?

A. Yes.

Q. And to whom did you sell those lands? I know you have described the sales, but which particular sales of yours were sold out of land adjacent to these?

A. I know that we sold Scott land in Sections 20 and 21 and we sold to Keiber-Barton people in '16 and '17, which joins 13.

(Testimony of Harry O. Comstock.)

Mr. Helvern: All right. That is all, your Honor on direct examination.

The Member: All right, you may step down and you will be recalled for cross examination.

(Witness temporarily excused. [194])

The Member: As I understand it, by consent of counsel, counsel for Respondent is going to place on the stand a witness out of order in order to get—

Mr. Comstock: (Interposing) I might state that I drove from Brockway to get here away in the middle of the night. I want to get back tonight, if I can.

Mr. Helvern: I would like to ask counsel if he is going to complete with Mr. Comstock this afternoon.

The Member: If it is at all possible we will get back to Mr. Comstock.

As I understand it, by consent of counsel, counsel for Respondent is going to place on the stand a witness out of order in order to get the Captain back to the defense of the United States.

Mr. Murray: I will call Captain Weber.

MR. ARNOLD N. WEBER

a witness called on behalf of Respondent being first duly sworn, testified as follows:

The Clerk: State your full name, please.

The Witness: Arnold N. Weber.

The Clerk: W-e-b-e-r?

(Testimony of Arnold N. Weber.)

The Witness: W-e-b-e-r.

Direct Examination [195]

Q. (By Mr. Murray) Mr. Weber, what is your present occupation?

A. Captain Company B 115th Engineers.

Q. What was your position prior to—or, how long have you been a Captain in the Army this time?

A. March 3rd.

Q. March 3rd this year? A. Yes, sir.

Q. And what was your occupation prior to that time?

A. Associate forester, El Dorado National forest.

Q. And how long were you in that position?

A. Twelve years.

Q. That took you back to 1928, did it?

A. Yes.

Q. During that period of time what generally speaking were duties?

A. To handle the timber sales, purchase of private lands, either by exchange or direct purchase, and administrative duties in connection with forest administration.

Q. And during that period did you appraise lands in the vicinity of Lake Tahoe?

A. Yes, sir.

Q. Did your appraisals result in the purchase by the Forestry Service of the United States Government of private lands? A. Yes, sir. [196]

Q. Could you say off-hand how many sales to the Government were handled by your appraisals?

A. There were two.

(Testimony of Arnold N. Weber.)

Q. And when were the appraisals made on those two, please?

A. The first one was made in 1935. The second one was made in 1938.

Q. What did the 1935 appraisal and sale cover? What lands?

A. It included all of the lands owned by the Carson and Tahoe—

Mr. Helvern: (Interposing) May I have that question, please?

(The pending question was read by the reporter as above recorded.)

A. (Continuing) It covered the lands owned by the Carson and Tahoe Lumber and Fluming Company and the El Dorado Wood and Fluming Company in El Dorado National Forest.

Q. (By Mr. Murray) Then what were the lands involved in your appraisal which resulted in the purchase of lands by the Government in 1938?

A. That was the William Greuner land.

The Member: When you speak of the El Dorado National Forest, I don't know where that is, Captain.

The Witness: That is in the Counties of Amador, El Dorado, Placer of California, and Douglas of Nevada.

The Member: Right around— [197]

The Witness: (Interposing) Lake Tahoe.

The Member: Right around Lake Tahoe?

The Witness: Extending from Placerville eastwards, sir.

(Testimony of Arnold N. Weber.)

Q. (By Mr. Murray) This is Exhibit 15 in evidence which indicates that the Carson and Tahoe Lumber and Fluming Company sold lands to the Government in 1938. Is that the sale you are talking about?

A. The appraisal was made in '35 and the deal was consummated in '38.

Mr. Murray: Oh. If your Honor please, I have discussed these two maps with counsel for the Petitioner and asked if he would agree that these maps could go in evidence not for the purpose of proving any of the facts stated on there in themselves, but merely to show your Honor where the different lands involved are, both comparatives, and the land sold; with the understanding that any facts we hope to prove by it will be proved in some other way.

The Member: Any objection?

Mr. Helvern: No objection.

The Member: Accepted in evidence.

Mr. Murray: I would like to have the large small-scale map marked as a Government Exhibit and then the small large-scale map as another Exhibit, and eventually they will be taken off the board and rolled. [198]

The Member: Granted.

The Clerk: K and L.

(The maps so offered and received in evidence were marked "Respondent's Exhibits K and L," and made a part of this record.)

Q. (By Mr. Murray) Mr. Weber, I show you

(Testimony of Arnold N. Weber.)

Respondent's Exhibit K, which is a map covering all sides of Lake Tahoe, and ask you if you can recognize that as such and if you are familiar with the different locations shown by that map.

A. Yes, I am.

Q. Can you state what the location is of the property that was purchased from Carson and Tahoe in 1938, which followed the appraisal of that land in 1935?

A. Well, that was included in the Trout Creek and the Basin largely, and also extended over into Cold Creek. There were several scattered areas, one of them particularly that lay at the foot of the Meyers Grade on the Little Truckee River, and then one area over by Zilio's Mill, 440 acres.

Q. What direction from the lake is this particular land that you are speaking of located?

A. South of the lake.

Q. What is the character of that land of which you are speaking?

A. It varies from meadow land to very steep and abrupt land, the majority of it being rather medium in slope. [199]

Q. Is there much meadow land involved?

A. Very little. All the meadow land that is involved is that which lies around the Trout Creek drainage.

Q. Is there timber on the land?

A. Yes, second growth.

Q. And what is the state of advancement?

(Testimony of Arnold N. Weber.)

A. It is unmerchantable by reason of size. It wouldn't be merchantable for any milling process.

Q. Could you state how many acres of that land were purchased by the Government of this Petitioner Company in 1938?

A. Somewheres in the neighborhood of 7,790 acres.

Q. And can you state the price that the Government paid Carson and Tahoe Lumber and Fluming Company for this land in 1938?

A. Three dollars per acre.

Q. Three dollars an acre for the whole piece, the whole 7,700-odd acres? A. Correct.

Q. Now, is the land that you are speaking of included in the sections on that map, Respondent's Exhibit K, which are colored in red?

A. This is the land here. That's it. I didn't get that question.

Q. That's right. The land of which you are speaking is included in the section on this map, Respondent's Exhibit K, [200] which is colored in red?

A. Yes, sir.

Q. At the time when you were appraising this land about which we are talking did you enter into negotiations with some officer of Carson and Tahoe Lumber and Fluming Company?

A. I entered into negotiations.

Q. I say, did you enter into negotiations with some officer? A. That's right.

Q. Who is the officer? A. Mr. Murphy.

Q. What was your understanding of his capacity?

(Testimony of Arnold N. Weber.)

A. That he was general manager.

Q. Of what?

A. Of the Carson and Tahoe Lumber and Fluming Company, and also of the El Dorado Wood and Fluming.

Q. And was it through negotiations with Mr. Murphy that this land was purchased by the Government for three dollars an acre?

A. Yes, sir.

Q. At the time when you were negotiating with Mr. Murphy for the land of which you have spoken, did you discuss the possible purchase by the Government of any other land owned by Carson and Tahoe Company? A. Yes, sir.

Q. What was the location of that land, please? [201]

Mr. Helvern: I object to discussions as to other land that he purchased.

The Member: Overruled.

Q. (By Mr. Murray) What is the location from the lake of the other lands about which you talked with Mr. Murphy, at the time the other land was appraised for purchase?

A. The land owned by the Carson and Tahoe Lumber Company over in Nevada and Douglas County.

Q. Can you identify the land in green cross-hatching as the land about which you talked with Mr. Murphy, on this map, Respondent's Exhibit K?

A. Yes, sir.

(Testimony of Arnold N. Weber.)

Q. Did Mr. Murphy offer that land for sale or any part of it to the Government in 1935 to 1938?

O. Offered it all.

Q. Did he offer it all, including Zephyr Cove?

A. Excluding that portion of Zephyr Cove.

Q. Excluding Zephyr Cove, he offered you all the land he had over there? A. Yes.

Q. Offered the Government? A. Yes.

Q. The sale of that? A. Yes.

Q. Do you know what year that was when he made this offer? [202] A. 1935.

Q. Will you state what he offered all this land in green on the map, Respondent's Exhibit Q, for, exclusive of Zephyr Cove?

Mr. Helvern: I object, if your Honor please, upon the ground that the testimony is incompetent, irrelevant and immaterial.

The Member: Overruled.

A. The back land was offered for \$3.00 an acre and the shore land was offered for \$10.00 an acre.

Q. (By Mr. Murray) And that was——

The Member: (Interposing) \$10.00 an acre? The shore land was \$10.00 an acre or \$10.00 a front foot?

The Witness: \$10.00 an acre, sir, your Honor.

Q. (By Mr. Murray) And that included all the shore land in green on that map with the exception of Zephyr Cove? A. Correct.

Q. Did you compare that land that he so offered that is in green on Respondent's Exhibit K, the back

(Testimony of Arnold N. Weber.)

land, with the land which was eventually purchased by the Government south of the lake in 1938?

A. Yes, sir.

Q. What did you decide with respect to the comparison between the two lands?

A. We purchased the land in the El Dorado forest in pre- [203] ference to that over here because this was more desirable; that is, the land within the El Dorado was more desirable.

Q. And the land you purchased was in the El Dorado forest?

Mr. Helvern: Your Honor, may I ask the purpose of this comparison made by Mr. Weber?

The Member: You mean more desirable for what?

Mr. Helvern: More desirable for what purpose?

The Witness: More desirable for our purpose of timber production.

Mr. Helvern: For the purpose of the production of timber?

The Witness: Yes, sir.

Mr. Helvern: For any other purpose, or don't you qualify for judging that for any other purpose?

Q. (By Mr. Murray) What did you state the purpose was?

A. For the purposes of timber production, recreation, water supply.

Mr. Helvern: Solely for that purpose?

The Witness: All purposes, sir.

Mr. Helvern: All purposes of the Government?

The Witness: To which land is put.

(Testimony of Arnold N. Weber.)

Mr. Helvern: What is the nature of the purpose to which the land is put by the Government?

Mr. Murray: Don't you think this is cross examination that he is injecting in here now?

The Member: Yes, I think so. You can take those things [204] up on cross examination.

Q. (By Mr. Murray) Then, do I understand that you consider the land in El Dorado Forest, which is south of the lake, was better land for the purposes you stated than the land in green on the map at the east side of the lake? A. Yes, sir.

Mr. Murray: That is all.

Cross Examination

Q. (By Mr. Helvern) Mr. Weber, you I believe stated that you are an appraiser for the purpose of acquiring forest reserves for the Government, are you not?

A. No sir, I stated that I was an associate forester, and that part of my duties were to appraise lands for the Forest Service.

Q. What per cent of your time is put in in appraising lands for the Government?

A. Thirty to thirty-five per cent.

Q. How long did you hold that position?

A. Since 1928.

Q. And what did you do prior to that time?

A. I was on the Sierra National Forest outside Fresno for three years in training.

Q. In training. So that in those three years

(Testimony of Arnold N. Weber.)

you trained to become qualified to buy this land for the Government? [205] A. No, sir.

Q. What did you do in the three years?

A. I was trained over a period of fourteen years. Still am.

Q. You mean you are still in training?

A. Yes.

Q. But your training began about 1925?

A. '26.

Q. '26. Did you consider yourself competent to judge land prior to the period of your training, the beginning of your training period?

A. I wouldn't. I just got out of college.

Q. Yes. Your determination then of the value of lands has to do with valuation from 1925 up to the present time? That is, it could not go back of 1925, could it, or 1928 when you first went to work?

A. That's right, sir.

Q. For the Government. And the purpose of your appraisals was for Government purposes?

A. That's right, sir.

Q. For any other purpose? A. No, sir.

Q. You have stated that you appraised this land for the purposes of the Government. In making this appraisal did you give or were you required to give any consideration to the frontage of this land or any of it on Lake Tahoe? [206]

A. No. No frontage land was involved other than that which Mr. Murphy offered to the Government at \$10.00 an acre.

(Testimony of Arnold N. Weber.)

Q. Therefore you did not give consideration to water frontage in buying for the Government or appraising for the Government?

A. Oh, yes, yes; in other cases.

Q. In other cases?

A. Not in this particular case.

Q. Did you in this case give consideration to frontage on Lake Tahoe?

A. No, none other than what Mr. Murphy offered.

Q. I believe you stated that Mr. Murphy was the general manager of the Carson and Tahoe Lumber and Fluming Company at that time?

A. Yes, sir.

Q. Did you understand that he had authority to negotiate with you? A. Yes, sir.

Q. And in what year was this negotiation made?

A. 1935, during the month of October, November.

Q. 1935? A. Yes, sir.

Q. You had no evidence, did you, that Mr. Murphy was really the general manager at that time or had any authority to negotiate for sale? [207]

A. Oh, yes, sir.

Q. Do you know whether he had had any approval of the Board of Trustees of that company of any negotiations he might make?

A. I imagine he did because he signed the option to sell in my presence in Carson City.

Q. Did he show a resolution of the Board authorizing him to do that?

A. He did that eventually.

(Testimony of Arnold N. Weber.)

Q. Did he show any resolutions or authority authorizing him to make you a proposition as to the sale of other lands for which option was not given?

A. He had the authority and he assured me he did.

Q. He told you that he was the general manager in the year 1935? A. Yes, sir.

Mr. Helvern: That is all.

Mr. Murray: That is all.

The Member: That is all, sir.

Witness Excused.

The Member: Now, do you wish to recall Mr. Comstock to the stand for cross examination? I wish counsel would proceed as expeditiously as possible.

Mr. Murphy: Yes, I will.

The Member: Yes. [208]

MR. HARRY O. COMSTOCK

recalled as a witness on behalf of Petitioner, resumed the stand and further testified as follows:

Cross Examination

Q. (By Mr. Murray) Mr. Comstock, as I understood your testimony the only actual purchases and sales of property that you had anything to do with on Lake Tahoe were in California. That is right, isn't it?

(Testimony of Harry O. Comstock.)

A. No. I mentioned two acres of land land at Lakeside that I bought from Park.

Q. Two acres of land at Lakeside?

A. Yes. And I also mentioned an option that I had in Nevada on Mink Harbor.

Q. Yes. But you didn't exercise the option?

A. No.

Q. So you didn't buy or sell that? A. No.

Q. What did you do with the two acres you bought? A. Sold it later.

Q. When did you buy the two acres?

A. About 1910.

Q. And outside of that you never owned, bought or sold any land on the Nevada side of Lake Tahoe, is that right? A. No, that is not correct. [209]

I didn't mention that when I went to Brockway I bought 80 acres and 40 acres in Nevada and subdivided it.

Q. Where was that located?

A. That's where Cal-Neva and Cal-Vada and all those homes are located. I sold all that property.

Q. That adjoins California land, Cal-Neva?

A. That is in Nevada and joins the California line where Brockway today is located.

Q. Except for the two acres did you ever own, buy or sell any land in Douglas County, Nevada on Lake Tahoe? A. No.

Q. Well, where do you get your basis for saying that every foot of lake front on Lake Tahoe is worth at least ten dollars an acre no matter how far it goes back?

(Testimony of Harry O. Comstock.)

A. I base that on the California values of locations of land in Tahoe being very high and Nevada land being just as desirable. I have always made the statement that land on Tahoe is limited and must carry a high valuation for desirable water front.

Q. Then you just kind of figured that because the prices were high on the California side they ought to be worth something on the Nevada side, is that it?

A. That's right, sir.

Q. Why do you suppose none of it ever sold back in the early days on the Nevada side? [210]

A. Well, the people sort of gathered in communities, and as the subdivisions or communities were opened up they buy.

Q. Isn't it strange that none of those communities ever got started over in Nevada?

A. No, I don't think so. We went over into Nevada in 1914 when I began buying some land in Nevada.

Q. Where was that? A. At Brockway.

Q. Oh, at Brockway? Over the line from Brockway?

A. About 80 acres and 40 acres in Nevada.

Q. When did you buy that?

A. 1910 I bought the 40 acres and in 1916 I bought the 80 acres.

Q. What did you pay for them, do you remember?

A. Yes. The 80 acres I paid \$16,000 for and the 40 acres I bought prior to that and I paid \$5,000

(Testimony of Harry O. Comstock.)

for, and I paid \$14,000 for Brockway, sold at public auction on the Court House steps in Auburn in 1909.

Q. That's Brockway. That's in California?

A. Yes, sir.

Q. And how many acres were in Brockway?

A. 80.

Q. 80 acres?

A. 80 in Brockway and then 80 and 40 in Nevada, made a 200-acre holding there. [211]

Q. You spoke of a large tract of land that was sold sometime before '13 for a dollar an acre, didn't you?

A. It was bought for a dollar an acre by my father-in-law, step father, rather.

Q. For a dollar an acre?

A. I beg your pardon?

Q. For a dollar an acre?

A. For a dollar an acre plus the taxes.

Q. And when was it purchased?

A. About 1901 or '2.

Q. How many acres?

A. 1100, now known at Tahoe as the McKeown tract.

Q. I understood you to testify that they sold that 1100 acres for \$44,000, isn't that right?

A. Right, sir.

Q. That is \$44 for one, just about?

A. That's right.

Q. And what date was it when they accomplished that?

A. 1910 and '11. Late 1910 or early 1911.

(Testimony of Harry O. Comstock.)

Q. That showed the trend of advancement on the California side, didn't it? A. Yes.

Q. But you don't know and never did know of any sales of land at fancy prices on the Nevada side that you testified about a while ago around 1913, do you? [212]

A. Well, there was quite a little transaction where Bijou is located today.

Q. But that is in California, isn't it?

A. That is in California. And then in Nevada, at Lakeside, in Nevada, that was operated by a man by the name of Hill and they sold some property. I don't know how much and what it brought.

Q. Well now, as far as your testimony goes, the only sales that you have spoken about knowing anything about is in Nevada right next to the California line on both sides, isn't that right?

A. That's right.

Q. I think I understood you to say that you didn't believe accessibility had anything to do with it. Now, what do you mean? Had anything to do with the lack of sales on the Nevada side? Was that accessible to the public in 1913? A. Yes.

Q. By what route? By what method?

A. By a road from Carson City to Placerville and to Tallac.

Q. Did you ever come over the road in those early days?

A. Yes, sir. I drove the road when I was a babe-in-arms and have been going over it ever since. I have never missed a year at Tahoe.

(Testimony of Harry O. Comstock.)

Q. Well, it was a pretty tough road in the early days, wasn't it? [213]

A. No, sir; much better road than people thought it was. In the early days when we had the stage coaches every foot of it was sprinkled.

Q. Most people didn't think it was very good anyway?

A. Yes, that is relative. When they began to get automobiles and come in by automobile, any road was considered tough, although those who used the mountain road didn't think it was bad.

Q. You wouldn't say that people were as anxious to go over that road as they were to come up from Carson City to Brockway in the early days, would you?

A. Oh, yes. The road from Truckee to Tahoe City was no better than from Carson City to Tallac.

Q. How did the people come into Carson City in the early days? A. They came in by stage.

Q. They came in by a railroad, too, didn't they?

A. After 1898, didn't they?

Q. Well, around 1913 the railroad was doing most of the business in bringing people in and out, wasn't it?

A. The stage coaches went off after the railroad was put in.

Q. But you say in the year 1913 the railroad was the thing, wasn't it?

A. No. People came by automobile. [214]

Q. You wouldn't say that very many came by automobile in 1913, would you?

(Testimony of Harry O. Comstock.)

A. Yes, a great many.

Q. Anywhere near as many as came by train?

A. No. I think probably—of course, you are figuring back. Your memory may not be so good, but I would imagine 60 or 70 came by train and 40 by automobile.

Q. In 1913?

A. The first automobile I owned in Tahoe was 1907 and there were automobiles coming over there long before that. Speaking of this case, I hope that you will not hold me longer than noon tomorrow.

Q. Mr. Comstock, it is true, isn't it, that this valuation that you have attempted to put on the Nevada side of Lake Tahoe is based on just what you thought it ought to be in view of what happened in California? Isn't that right?

A. That is true.

Mr. Murray: That is all.

The Member: Any other questions on redirect?

Mr. Helvern: No questions.

The Member: That is all, Mr. Comstock.

Witness Excused.

Mr. Helvern: Mr. Bigelow. [215]

MR. S. C. BIGELOW

a witness called on behalf of Petitioner, was duly sworn, and testified as follows:

The Clerk: State your full name, please.

The Witness: S. C. Bigelow; B-i-g-e-l-o-w.

(Testimony of S. C. Bigelow.)

Direct Examination

Q. (By Mr. Helvern) Will you state your name, Mr. Bigelow? A. S. C. Bigelow.

Q. And are you presently connected with this Petitioner? A. I am.

Q. And what is your connection?

A. Secretary.

Q. How long have you been Secretary of Petitioner? How long have you been the Petitioner's Secretary? A. About 1924, as I recall.

Q. 1924. Mr. Bigelow, you listened to the testimony given by Captain Weber and, as I recall that testimony, he stated that it was his understanding that Mr. Murphy, a director of your company at the time you were secretary, in 1935, was the general manager of that company. Do you know whether or not that was true? A. That was not true.

Q. Did Mr. Murphy have any authority to negotiate for sales of land in 1935? [216]

A. Not to my knowledge. Those were matters that had to be placed before the Board of Trustees, and Mr. E. S. Daugherty was the president.

Q. Mr. Daugherty was what?

A. He was the president of the company and the trustee also.

Q. And Mr. Murphy did not have authority without the specific authority of the Board of Trustees to negotiate for any sales of land, is that true?

A. That is correct.

Q. Mr. Bigelow, you are as secretary, the custo-

(Testimony of S. C. Bigelow.)

dian of the documents of the company, are you not?

A. Yes, sir.

Q. And will you identify these two papers?

You will put it in as an Exhibit?

Mr. Murray: I hadn't intended to, but you may put it in.

Q. (By Mr. Helvern) Mr. Bigelow, this is what purports to be a corporation Income Tax Return of Carson and Tahoe Lumber and Fluming Company for the year 1937. Do you recognize those signatures? A. Yes, sir.

Q. That is the original Return?

A. Yes, sir.

Mr. Helvern: For the record I will put it in as Petitioner's Exhibit. [217]

Mr. Murray: May I ask permission to withdraw it and have copies made of all income or estate tax returns?

The Member: Leave granted.

The Clerk: 19.

(The Income Tax Return so offered and received in evidence was marked "Petitioner's Exhibit 19" and made a part of this record.)

Mr. Helvern: No objection.

Q. (By Mr. Helvern) Mr. Bigelow, do you find any reference in that Return to any sales of land by Petitioner in the year 1917? A. I do not.

Q. No land sales were reported in the year 1917?

A. I don't know of any.

Q. Does the valuation of any land appear in that

(Testimony of S. C. Bigelow.)

Return at any place? There is no balance sheet with the Return, is there?

A. There is no balance sheet. I don't see anything that reflects the value of land.

Q. Mr. Bigelow, I hand you a copy of what purports to be a Capital Stock Tax Return of Carson and Tahoe Lumber and Fluming Company for the year 1917. Do you remember seeing that in the company's files and did you bring that to San Francisco?

A. Yes. It is a part of the company files.

Q. Yes, sir. [218]

A. I brought it to San Francisco.

Q. In that company's copy of the Capital Stock Tax Return——

By the way, I will have this put in. You have no objection to putting this in evidence in the absence of the original Return?

Mr. Murray: No objection.

The Member: Accepted in evidence.

The Clerk: 20.

(The Capital Stock Tax Return so offered and received in evidence was marked "Petitioner's Exhibit 20" and made a part of this record.)

Mr. Murray: I would like permission to withdraw it.

The Member: Leave granted.

Mr. Murray: Oh, that is your Return.

Q. (By Mr. Helvern) Mr. Bigelow, is there any reference made in this Capital Stock Tax Re-

(Testimony of S. C. Bigelow.)

turn to any land valuations for the company or any valuations of property of whatever kind?

A. I see none.

Q. Yes. Attached to this return is a memorandum. In your opinion, is that a part of the original draft of that Return, that typewritten carbon copy of a typewritten memorandum?

A. I would say it was.

Q. You would say it was? A. Yes. [219]

Q. Would you read what appears on that carbon copy?

A. "To comply with the requirements of the United States Income Tax Law and the decisions relating thereto, enacted September 8, 1916, a corporation should change the book value of its property to comply with the law and decisions, by putting a new valuation and appraisement upon its property, as of March 1, 1913.

"By this is meant in fixing this value, the value should be made to be a fair value of the property as of the date of March 1, 1913.

"In the U. S. Income Tax Return of March 1, 1917, and each year thereafter, the gain or loss to be reckoned with in said return, is based upon whether the property, in the event of a sale, was sold for more or less than the value so fixed as of March 1, 1913."

Q. Mr. Bigelow, then in your opinion is that statement a part of the Capital Stock Tax Return?

A. I would say, Yes.

Q. Mr. Bigelow, in that statement attached to the Capital Stock Tax Return it is indicated that the

(Testimony of S. C. Bigelow.)

company would use that \$260,000 value of land in connection with its sales of property that you read. In the Income Tax Returns which you have prepared and which you are familiar with what value did the company use with respect to its sale of land from and after 1917? [220]

A. What values?

Q. At what basic values did they claim when they filed their returns?

A. Do I have the question right? You are speaking now of Income Tax or Capital Stock Tax?

Q. I am speaking of Income Tax Returns. In computing any profit or loss on sales of lands what basic value did they use for determining whether a profit or a loss was sustained?

A. The March 1, 1913 value; the difference between that and the selling price, less commissions and expenses.

Q. Did they ever use in their Income Tax Returns any value based on this \$260,000, to your knowledge? A. Not to my knowledge.

Q. Mr. Bigelow, you have stated that the company did not use the book value at any time to your knowledge in making returns. I have in my hand here a claim for refund, which is your file copy of a claim for refund filed for the year 1935. Do you recall any claim for refund filed in that year?

A. Yes, I do.

Q. And why was it necessary to file that claim?

A. In making up the Income Tax report I had used the book value in figuring the profit instead of

(Testimony of S. C. Bigelow.)

using the March 1, 1913 value, which resulted in an overpayment of tax and a claim was filed for refund. [221]

Q. For refund. Based upon this error, shall we say? A. That is correct.

Mr. Murray: I will ask that that be stricken out. This leading is just terrible! He says "Based upon an error".

The Member: Well, "If an error". I will strike out the question.

Mr. Helvern: I will put it another way.

Q. (By Mr. Helvern) Mr. Bigelow, you state a refund claim was filed with the Government and in that refund claim what was the basis that was claimed for this particular sale in 1935 in the refund claim?

A. We asked for a return of, I recall, around \$831.

Q. Is this a copy of the claim for refund, your own file copy? A. Yes, sir.

Q. And what was the basis for that claim, did you say? A. The basis for it?

Q. Yes.

A. I used the book values instead of the March 1, 1913 values in making up the——

Q. (Interposing) Yes, sir. Did the Government ever refund that money to you? A. Yes, sir.

Q. I hand you a photostatic copy of a certificate of over assessment by the Government. Did you

(Testimony of S. C. Bigelow.)

ever see the original [222] of the paper of which this is a photostat? A. Yes, sir.

Q. Where is the original?

A. It appears to be lost. I have made an endless search to locate it.

Q. But to your own knowledge do you know that that is the photostatic copy of the Government's certificate of over assessment? A. I do.

Q. And what connection has this certificate of over assessment with this claim for refund that you filed, or does it relate to this claim?

A. It does.

Q. It is for the exact amount of the claim?

A. It is for the exact amount of the claim, plus interest at \$113.12.

Mr. Helvern: I would like to submit this as Petitioner's Exhibit, with counsel's consent.

Mr. Murray: I object to it, if your Honor please, being incompetent, irrelevant and immaterial to this case. I don't know anything about the original of it, but it involves apparently a Treasury letter that has to do with some controversy they had. And I don't see any relevancy to this case whatsoever.

The Member: Overruled. I think it might be pertinent [223] to explain some matters that came out on cross examination.

Mr. Murray: All right. May I have an exception?

The Member: Yes. Admitted in evidence.

Mr. Helvern: May this go in as an Exhibit, your Honor?

(Testimony of S. C. Bigelow.)

The Member: It may be admitted in evidence.

The Clerk: 21.

(The certificate of over assessment so offered and received in evidence was marked "Petitioner's Exhibit 21" and made a part of the record.)

Q. (By Mr. Helvern) Mr. Bigelow, of your own knowledge the company received that money, did they?

A. Yes, sir.

Q. In what year did they receive it?

May I have the Income Tax Return for 1938?

A. I would have to prove that by the record. It may have been 1938, I don't recall.

(The Income Tax Return referred to was passed to Mr. Helvern.)

Q. (By Mr. Helvern) Mr. Bigelow, this is the company's Income Tax Return for the year 1938, the original Return which was just handed to me by Government counsel, which we will put in as an Exhibit. If you will look at the reconciliation of surplus you will find the figure "831". Do you find a reference to a refund of taxes on that return?

The Member: If there is any in there it will speak for itself. [224]

Mr. Helvern: I will say for the record that it is in the reconciliation.

A. I didn't pick it out individually there. It might be in some other figure.

Mr. Helvern: I would like to submit this as Petitioner's Exhibit.

(Testimony of S. C. Bigelow.)

The Member: No objection? Do you want to withdraw them?

Mr. Murray: Yes, I wish to withdraw all these returns.

The Member: Leave granted.

The Clerk: 22.

(The Income Tax Return so offered and received in evidence was marked "Petitioner's Exhibit 22" and made a part of the record.)

Q. (By Mr. Helvern) Mr. Bigelow, you listened to the cross examination of Mr. W. S. Bliss. In 1912 or '13 or thereabouts it was brought out in the cross examination that certain lands of this company had been sold by the Sheriff at a tax sale to Mr. Bigelow. You are that Mr. Bigelow, are you?

A. Yes, sir.

Q. And is that true, that you were the purchaser of these lands?

A. Not for myself. I purchased them for the company.

Q. Tell us the circumstances of your purchase of these lands. [225]

A. Well, they were permitted to go delinquent, as I understand, to perfect title, and I simply bought them in at Sheriff's sale and reconveyed them to the company, paying the taxes, plus the penalties and interest, advertising.

Q. I believe that at the Sheriff's sale that land was bought in at a certain price per acre, was it not?

(Testimony of S. C. Bigelow.)

Anyhow, do you recall what price you bought the land in at? A. No, I do not know.

Q. Did you have any trouble buying the land?

A. No, sir. There were no other bidders. I simply offered the amount of the taxes and the accumulations, and so on, and I received the deed at that price.

Q. You did not buy it for your own account?

A. No, sir.

Q. For whose account, then?

A. The Carson and Tahoe Lumber and Fluming Company.

Q. At their specific request and direction?

A. Yes, sir.

Q. And that was for the purpose of quieting their title to these lands?

A. As I understood it, yes.

Q. The amount of money paid by you per acre for that land——

Mr. Murray: (Interposing) If your Honor please, I am going to ask that he not lead too much. It just amounts to testimony by counsel. [226]

Q. (By Mr. Helvern) How did you determine what amount per acre to pay for that land, Mr. Bigelow?

The Member: I will say he has already testified that was the amount of tax charges that were accrued?

Mr. Helvern: No further questions.

(Testimony of S. C. Bigelow.)

Cross Examination

Q. (By Mr. Murray) Mr. Bigelow, what office did Mr. Murphy hold in the Carson and Tahoe Lumber and Fluming Company in 1935?

A. Vice-president and trustee.

Q. Isn't it true that he represented the company in making contracts for sales of land of the company?

A. Well, he would probably discuss those matters with people that were interested and report to the Board of Trustees.

Q. Well, you were here this morning, were you not? A. Yes, sir.

Q. You heard Mr. Bliss say that in 1926 one of the reasons he got out of the company was that Mr. Murphy wanted to sell some of the land?

A. I did hear him say that.

Q. That is the truth, isn't it?

A. Well, there were differences between Mr. Bliss and Mr. Murphy. Of course, it was different at that time because Mr. Daugherty was not in the company. [227]

Q. When did Mr. Daugherty come in? 1926 is the year that I am speaking of. Was Mr. Daugherty in the company then?

A. I would have to look at the minute book. I couldn't tell you.

Q. Well, don't you remember that Mr. Bliss said it was Mr. Murphy and Mr. Daugherty that stood against him on that sale in '26?

(Testimony of S. C. Bigelow.)

A. I think he did; yes, sir.

Q. Well, don't you think that that is true, too?

A. I think so.

Q. So Mr. Daugherty was in from '26 on, at least until he died? I understand he is dead, isn't he?

A. From '26 to January of last year.

Q. Now, Mr. Murphy obviously locked horns with Mr. Bliss as to whether or not he could sell a piece of property to Mr. Malley, and Mr. Murphy won, didn't he, in that controversy?

A. With the assistance of Mr. Daugherty, because Mr. Daugherty or the majority of the trustees were agreeable with Mr. Murphy's ideas regarding it.

Q. Did Mr. Daugherty side with Mr. Murphy on that? A. Yes.

Q. And then would it be your testimony that Mr. Murphy didn't go on dickering with people selling the rest of the land?

A. I won't say that he didn't dicker, but I will say that [228] he didn't have the last say.

Q. Well, he was authorized to make negotiations with people for the purchase, was he not?

A. I think he did it on his own as a trustee. I don't know of any written authority that he had.

Q. Do you have the minute books of the company here? A. I think so.

Mr. Murray: Well, I won't take the time now if it will be understood that they will have the minute books here tomorrow for me to examine, if your Honor please. Will that be understood?

(Testimony of S. C. Bigelow.)

Mr. Helvern: Yes.

The Witness: Yes.

Q. (By Mr. Murray) Now, Mr. Bigelow, first I will ask you about this tax sale. I will show you what purports to be a Quit Claim Deed from the County Treasurer of Douglas County to you with respect to this tax sale that we are speaking of. Will you look at it and see if you can recognize that as being the deed?

A. I presume it is. May I ask at this point if in 1913 the County Seat was located in Genoa? I think it was. I made many trips to Genoa on a horse and buggy. Anyway, I am quite sure that that is the document.

Mr. Murray: Do you object to that?

Mr. Helvern: No. [229]

Mr. Murray: Then I offer in evidence as Respondent's Exhibit M a copy of a Quit Claim Deed from the Treasurer and Tax Receiver of Douglas County, Nevada to S. C. Bigelow, dated July 1, 1913.

The Member: Admitted in evidence.

(The Quit Claim Deed so offered and received in evidence was marked "Respondent's Exhibit M" and made a part of the record.)

Q. (By Mr. Murray) Now, Mr. Bigelow, this document now in evidence as Respondent's Exhibit M states that you were deeded a number of parcels of real property, which are set forth in here, on July 1, 1913 for \$26. Does that sound like the amount?

(Testimony of S. C. Bigelow.)

A. I don't remember. I couldn't tell you.

Q. Well, that's what the document shows?

A. All right.

Q. Now, calling your attention to that, I understood you to say that this was a public sale although you did not have any competition at the sale, is that right?

A. I made that statement because there was seldom a year that there wasn't some property in some of our corporations that a cloud may be located on the title and we permit it to go delinquent and effect the title and buy it in at Sheriff's sale. And I take it that that was the same thing.

Q. Well, for whatever reason this went to tax sale and was purchased by you in 1913 for \$26.00, the land described in [230] this document, is that right? And nobody showed up to bid any more on it?

A. Not to my recollection. I don't recall of anyone offering any competition at all.

Q. It was a public sale? There was notification given? A. Yes, sir.

Mr. Murray: I must confess that I have a duplication here. This Quit Claim Deed went in in certified form as Exhibit D. So I ask that is what now marked M may be expunged from the record and taken out.

The Member: Leave granted.

Mr. Murray: It is a duplication.

Q. (By Mr. Murray) Mr. Bigelow, we have had so many 3/1/13 values referred to here today

(Testimony of S. C. Bigelow.)

that when you refer to a 3/1/13 value I don't know which one you mean. Which 3/1/13 value did you mean when you were talking about this Capital Stock Tax Return?

A. Well, it is the book value set up in the records of the company. I can't quote the figures.

Q. Well now, on the Capital Stock Tax Return which is marked Petitioner's Exhibit No. 20, Capital Stock Tax Return for 1917, you show a value of your stock which reflects a value of your property as reported here at \$104,000. Now, did you have one value of this property for Capital Stock Tax purposes and another for Income Tax purposes? [231]

A. I would say that the capitalization there didn't reflect the true value of the property. I think that is arbitrary. That is my own opinion.

Q. I understood you to say that you had some 1917 sales of property, which I am sure Petitioner's Exhibit 15 bears out, and that it was your purpose to report those on your 1917 Income Tax Return.

Mr. Helvern: Mr. Bigelow was not secretary of the company and had no connection with it in 1917 until, I believe, 1925. Those are not his returns.

Isn't that so?

The Witness: That is correct. It is simply a company record. I had nothing to with the return.

Mr. Helvern: You have taken the custody of those records until 1925?

The Witness: Until about 1924.

(Testimony of S. C. Bigelow.)

Mr. Helvern: I just wanted to straighten that out for the record, if your Honor please.

Q. (By Mr. Murray) You were connected with the company before 1924, though, were you not, Mr. Bigelow? A. No, sir.

Q. Did you just come into the employ of the company?

A. I have been in the employ of the railroad since 1908.

Q. Oh. Then when you purchased this property at a tax sale in 1913 you weren't working for the company then? A. No, sir. [232]

Q. You weren't an officer of the company then?

A. Well, I was acting as ticket auditor for the railroad company at that time.

Q. I show you a letter to the Commissioner of Internal Revenue dated September 16, 1926 and ask if that is your signature attached to the end of it. A. Yes, sir.

Q. I will ask you to look it over and see if you remember.

A. (Examining letter) That letter was written by Mr. Murphy. I signed it.

Q. But you remember the letter? At least you have identified your signature on there?

A. I identify my signature, yes. The letter was written by Mr. Murphy.

Mr. Murray: I offer this letter in evidence as Respondent's Exhibit M, I believe it is now.

Mr. Helvern: No objection, if we may have this withdrawn for a copy.

(Testimony of S. C. Bigelow.)

Mr. Murray: I would like to ask at this time that privilege, too.

The Member: Admitted in evidence. Leave granted to withdraw and substitute copies.

(The letter so offered and received in evidence was marked "Respondent's Exhibit M" and made a part of this record.)

The Member: We will now recess until 10:00 o'clock [233] tomorrow morning.

(Whereupon, at 4:55 P. M. the hearing of the above entitled matter was adjourned to Thursday, June 26, 1941, at 10:00 A. M.) [234]

S. C. BIGELOW

a witness on behalf of Petitioner, having been previously duly sworn, testified further as follows:

Cross Examination (Continued)

Q. (By Mr. Murray) Mr. Bigelow, I will show you Respondent's Exhibit M which you identified as a letter you signed which is addressed to the Commissioner of Internal Revenue, dated September 16, 1926.

I will ask you what was the occasion for that letter? What was the purpose of it?

A. (Examining letter) I haven't read all of this letter.

Q. Well, will you read it, please?

(Testimony of S. C. Bigelow.)

A. Have you the letter that this makes reply to, this letter here of August 5, '26?

Q. I wouldn't have that because it was a letter to you. I may have a copy, but I am not certain.

A. Well, apparently it has to do with the payment of the capital stock tax. [238]

Q. I show you a copy of a letter of August 5, '26, which appears to be the copy of the letter you are answering, and ask you if you think it is?

A. (Examining letter) This has to do, of course, with the payment of the capital stock tax for the years 1922, '23, '24 and '25.

Q. Now, that appears to be the letter you were answering, doesn't it, a copy of the letter?

A. Yes, it does.

Mr. Murray: I offer this copy of a letter to the Petitioner company dated August 5, 1926, addressed to the company and signed by Deputy Commissioner R. M. Estes, Deputy Commissioner of Internal Revenue, which is the letter which called for the answer represented by Respondent's Exhibit M, and ask that it be introduced in evidence.

The Member: Received in evidence.

The Clerk: Exhibit N.

(The letter dated August 5, 1926, so offered and received in evidence, was marked Respondent's Exhibit N, and was made a part of this record.)

Q. (By Mr. Murray) Now, the letter that you hold in your hand, Respondent's Exhibit M, is an

(Testimony of S. C. Bigelow.)

answer to this letter, Respondent's Exhibit N, is that right? A. That is correct.

Q. Well, now, the letter which you were called upon to answer [239] says, in part: "It is noted that for the 1926 taxable period, the real estate held by your corporation has a fair value of \$260,000. However, from an examination of your returns filed for the preceding taxable periods, this item has a fair value ranging from \$38,713.00 to \$90,000.00. It therefore appears that the fair value of the real estate for the taxable periods ended June 30, 1919 to 1925, inclusive, might be understated. You will find enclosed forms for amended returns which should be complete in detail and forwarded direct to this office."

Now, I understod you to say yesterday that the capital stock tax returns that your company was filing about that time were just arbitrary figures. Is that still your testimony?

A. Well, I think, as I recall the situation, the amount of the valuation was permitted by law to be increased or decreased over a given period there.

Q. Of course, the law will speak for itself, but if I refresh your memory a little, isn't that since 1932 since that has been in effect?

A. That may be true.

Q. Obviously here they were telling you that maybe you understated it, and asking you if you didn't want to put the right price on; didn't they?

A. That is correct. [240]

(Testimony of S. C. Bigelow.)

Q. Now, in here you stated in answer to the letter which is Respondent's Exhibit N in evidence, "This company was originally organized in 1873 to conduct a wood and lumber business, but for the past 30 years or more that portion of its business has been discontinued and it is now but a liquidating company, the limited rentals and other incidental receipts not even paying taxes and operating expenses, and there has been but a limited demand to purchase the property of the company."

That is true, isn't it?

A. That is quite true.

Q. "The holdings are all on or in the neighborhood of Lake Tahoe; late last fall——" and I call your attention to the fact that this letter is dated September 16, 1926—that would be the fall of '25—I am quoting again "——late last fall and this spring a railroad was broad gauged to Tahoe and one of the largest resorts was taken over and enlargement and extensive improvements promised gave added value to the lands on the lake and particularly in that immediate vicinity"——.

It added some value to it at that time, did it not?

A. I think he states certain valuations there, if I am not mistaken, certain figures.

Q. I will go on quoting. "——but unfortunately the holdings of this company are largely on the opposite side of the lake, and while there has been augmented value it has not been so pronounced." [241]

(Testimony of S. C. Bigelow.)

Now, you meant that the influx or the broad-gauging of the railroad and all that benefitted mostly the California side, isn't that right?

A. Well, that was—as I tell you, Mr. Murphy wrote that letter. That was Mr. Murphy's idea of conditions at the lake at that time.

Q. Well, you signed this letter, though. That is your signature, isn't it?

A. (Examining document) That is my signature, yes, sir.

Q. Well, is there anything on the letter that indicates Mr. Murray wrote it?

A. Well, I know his language so very well and I have signed many letters he has written in various departments.

Mr. Bigelow, I show you what purports to be an original and amended capital stock tax return of Carson and Tahoe Lumber and Fluming Company for each of the years 1923, 1924 and 1925, which are the three years that were mentioned in the letter which is Respondent's Exhibit M in evidence; and ask you if you can identify your own name, your own signature and the signature of Mr. Bliss on each of these?

A. (Examining documents) Yes, sir, correct; that is my signature and Mr. Bliss'.

Q. That is Mr. Bliss' there (indicating)?

A. Yes, sir. Those returns were made up under the direction of Mr. Bliss and simply mailed to me at Carson City to [242] complete and file with the Collector of Internal Revenue.

(Testimony of S. C. Bigelow.)

Q. Yes. Which you did? A. Yes, sir.

Q. And you took his oath of signature there?
You acknowledged his signature under oath?

A. That is correct.

Mr. Murray: I offer in evidence as Respondent's Exhibits the three sets of capital stock tax returns of the Petitioner, each set consisting of an original and amended return for each of the years '23, '24 and '25. They are together.

Now, the first exhibit is an original and amended capital stock tax return for the year '23.

Mr. Helvern: No objection.

The Member: Accepted in evidence.

(The amended and original capital stock tax returns for 1923 so offered and received in evidence, was marked Respondent's Exhibit O, and was made a part of this record.)

Mr. Murray: The next exhibit is an original and amended capital stock tax return for the year '24.

The Member: Accepted in evidence.

(The original and amended capital stock tax return for 1924 so offered and received in evidence, was marked Respondent's Exhibit P, and was made a part of this record.)

Mr. Murray: Next is an original and amended capital [243] stock tax return for the year '25.

(The original and amended capital stock tax return for 1925 so offered and received in evidence, was marked Respondent's Exhibit Q, and was made a part of this record.)

(Testimony of S. C. Bigelow.)

The Clerk: O, P, and Q. All admitted?

The Member: Yes, all admitted in evidence.

Q. (By Mr. Murray) When did you become Secretary of the Company, of this Petitioner company here, Mr. Bigelow?

A. About 1924, as I recall.

Q. Then, do you have knowledge of the Skyland transaction, the so-called Skyland transaction, which adjoins Zephyr Cove on the north, the Skyland territory?

A. I remember of the sale being made there, what was called the Skyland property, but I couldn't relate the detail of it.

Q. Could you locate it on a map, this Skyland property? I will show you a map which is marked Respondent's Exhibit L and ask you if these sections marked on this map in yellow constitute what is ordinarily called Skyland?

A. That is apparently the property, yes, sir, just north of Zephyr Cove.

Q. Yes. Well, now, when did—well, in the first place, the Petitioner company here sold that Skyland property, did it not?

A. It was sold, yes, sir.

Q. When was it sold, do you know? [244]

A. I have a record of it if I could refer to it.

Q. Yes, I would like you to. Which one would you like, your exhibit?

A. No; I have it over there in my brief case.

(Examining documents) November 1 of 1923.

(Testimony of S. C. Bigelow.)

Q. On November 1, 1923 Carson and Tahoe Company sold Skyland to whom?

A. Charles L. Fulstone.

Q. Your records do not show that anyone else was interested in the deal with him, do they?

A. No, sir.

Q. At that time anyway? A. No, sir.

Q. Well, did the taxpayer corporation here ever reacquire Skyland?

A. Reacquire the property?

Q. Yes, reacquire the property?

A. Not to my knowledge, no.

Q. Did they ever reacquire any interest in the property? A. I think not.

Q. Then, it was just sold and that was the end of it, in 1923, is that right?

A. It was conveyed by the company and never repossessed or reconveyed to the company, as I remember.

Q. Well, I show you the minutes of the taxpayer company [245] dated August 28, 1926 and I ask you if this is your signature on the minutes?

A. (Examining document) Yes, sir.

Q. And what is the other signature on those minutes? A. F. E. Murphy, Vice President.

Q. He was Vice President at that time?

A. That is right.

Q. And I will ask you if those minutes do not refer to some angle of this Skyland transaction?

A. Yes, they do.

(Testimony of S. C. Bigelow.)

Q. Well, I will ask you what they have to do with it? What was in controversy then?

A. It would appear that there was an agreement between Mr. W. S. Bliss, the then President of the Company, and Charles L. Fulstone.

Q. There was an agreement when?

A. (Examining document) This doesn't say, but I take it that it must have been about the time the land was sold in 1923.

Q. There was an agreement between Mr. Bliss and Mr. Fulstone with respect to the sale to Fulstone of Skyland for \$9,000; that is it, isn't it?

A. It had to do with that, no doubt.

Q. And it further shows that Mr. Bliss had an interest in that with Mr. Fulstone, doesn't it? [246]

A. Yes, sir.

Q. And these minutes show that in 1926 it had been called to the attention of the company and to Mr. Bliss that he at that time agreed to return to the company anything he got out of the deal; isn't that it?

A. That is substantially it, yes, sir.

Q. All right, that is all on that.

Where is Mr. Murphy now, Mr. Frank Murphy, the one we have been talking about here, who was Vice President in——

A. (Interposing) He has been dead for about a year and a half or more.

Q. And was he connected with the company up to the time of his death?

A. Yes, sir, he was.

(Testimony of S. C. Bigelow.)

Q. And what was his position at the time of his death? Was he still Vice President?

A. He was still Vice President.

Q. And he was Vice President of the company in 1935 when negotiations were being made for the sale to the Forestry Department of the lands that were discussed yesterday?

A. I am quite sure he was.

Q. Do you know how many shares of stock Mr. Frank Murphy owned in the taxpayer corporation?

A. He had about five voting shares, I think.

Q. And he held proxies for other shares, did he not? [247]

A. Sometimes the proxies ran to him and other times they would run to Mr. Daugherty, as I recall.

Q. Well, I show you a minute book of the taxpayer corporation covering the year 1936 and ask you if you can determine by that how many shares of stock in the company Mr. Frank Murphy held proxies for?

A. 219.3.

Q. Will you recompute that again?

A. 219.3.

Q. That was in the year 1936, wasn't it?

A. Yes, sir.

Mr. Murray: This will be the last point, if your Honor please, if you will bear with me a minute. This is a minute book that I have not seen before.

Q. (By Mr. Murray) I show you the minute book of the taxpayer corporation covering the year 1935 and ask you how many shares of stock Mr. Frank Murphy owned that year?

A. You mean how many he had by proxy?

(Testimony of S. C. Bigelow.)

Q. Well, by himself, in his own name first, how many? A. Five shares in his own name.

Q. Then, how many shares did he hold proxies for in 1935, or at this date anyway in 1935? The date is what? May 14, 1935?

A. That is right. 263.3 shares by proxy.

Q. That makes a total of 268 shares and three-tenths by his [248] own ownership and by proxy?

A. Correct.

Q. How many outstanding shares of stock were there in this taxpayer corporation during the year 1935?

A. Three hundred and fifty — let's see — 358 shares.

Q. Well, that is all that was voted there, but I guess they had more than that, didn't they? Wasn't it 520?

A. No; the 520—understand that of the 520 shares 162 shares had been returned by the Bliss family.

Q. That is right.

A. So there was a total of——

Q. (Interposing) A total of 348 outstanding shares of the corporation in 1935. Mr. Murphy on May 14, 1935 held proxies to 268—well, he owned 5 and held proxies to 263.3 more?

A. That is correct.

Q. And therefore he very obviously had a large control of the stock ownership in the voting power?

A. He did in the stockholders' meetings.

(Testimony of S. C. Bigelow.)

Mr. Murray: Yes.

The Member: Is that all the cross examination?

Mr. Murray: That is all.

The Member: Redirect?

Redirect Examination

Q. (By Mr. Halvern) Mr. Bigelow, regardless of ownership of [249] stock, is it true that any sale of land could only be negotiated by——

Mr. Murray: (Interposing) If your Honor please, I am going to ask there be no leading this morning, that he just ask him the question as to what happened and so on and so forth.

Q. (By Mr. Helvern) Mr. Bigelow, what authority was required to effect the sale of any parcel of land during the year 1935?

A. The permission of three trustees.

Q. Three trustees or two trustees?

A. Well, there was a meeting of three. Of course, the majority was two.

Q. You stated yesterday on cross examination that at the time in 1914 or '15 when you bought for the Petitioner some land at a tax sale that you were not employed by the company. Is that true, that your employment did not commence until 1936, I believe?

A. '24, that is correct.

Q. Just explain the nature of your employment, if any, which might have occurred at this time in 1915 or '14 when this land was purchased by you?

A. I am trying to think when Mr. Murphy became Vice President and General Manager of the

(Testimony of S. C. Bigelow.)

railroad, or Vice President in charge of the railroad because I was under his supervision in railroad service and at his direction I bought this land [250] in for this corporation.

Q. At the direction of Mr. Murphy you bought the land in? A. Yes, sir.

Q. You are familiar with the laws of Nevada and it is a matter of record—that when land is sold at a taxable sale is there any right of redemption?

A. Yes, the taxpayer has two years to redeem—

Mr. Murray: (Interposing) If your Honor please, I ask this be stricken. The law will speak for itself. This is a conclusion—

The Member: (Interposing) Yes, I think so.

Mr. Murray: I ask it be stricken.

The Member: That will go out. The Board will take judicial notice of the laws of the various states.

Q. (By Mr. Helvern) At the time you purchased this land, a deed has been introduced showing you took title, a quit-claim deed. For how long did you retain title to that land in your own name?

A. I would say just long enough to reconvey it to the company.

Mr. Helvern: That is all.

The Member: That is all, sir.

Witness excused.

The Member: Petitioner rests?

Mr. Helvern: Yes, Petitioner rests.

The Member: All right, call your first witness.

[251]

Mr. Murray: I will first call Mr. Hall, please.

JOSEPH W. HALL

a witness called on behalf of Respondent, was duly sworn and testified as follows:

The Member: State your full name, please.

The Witness: Joseph W. Hall, H-a-l-l.

Direct Examination

Q. (By Mr. Murray) Mr. Hall, what is your business?

A. I am in the real estate and insurance business.

Q. Located where? A. In Reno, Nevada.

Q. And how long have you been in the real estate business?

A. Well, since the year 1920.

Q. Are you generally familiar with the lands on the Nevada side of Lake Tahoe?

A. Yes, I have known about them since about 1901.

Q. You were up at the lake on the Nevada side in 1921? A. I was.

Q. How did you get up there?

A. I went up with a party camping and I think we went by horse team.

Q. How was the road at that time?

A. Oh, it was a fairly good country road.

Q. Which road did you come in on? [252]

A. We came by way of Glenbrook, Carson City and Glenbrook.

Q. Carson City and Glenbrook. How much time did you spend up at the lake in 1901?

(Testimony of Joseph W. Hall.)

A. I spent the summer until along about the first part of September.

Q. At that time did you have any interest in owning any property up there?

A. No, I did not.

Q. When did you go up again to the lake?

A. I don't recall, but I was up and down several times after that time.

Q. Well, did you actually purchase any land on the Nevada side of Lake Tahoe in the days around 1901 or thereabouts?

A. I bought 25.15 acres in 1903.

Q. I show you Respondent's Exhibit L in evidence and I ask you if you recognize that map which is one compiled by the Nevada State Highway Department as a map of the Nevada side of Lake Tahoe?

A. (Examining map) I do.

Q. Do you recognize on this map the property that you purchased in 1903?

A. Yes.

Q. Did you state the price? What was the price that you paid for this 25 and a fraction acres in 1903?

A. I paid about \$1.25, a dollar and a quarter an acre. [253]

Q. How much shore front was there on the lake?

A. About 2000 feet.

Q. About 2000 feet of shore front and you bought the whole thing for a dollar and a quarter an acre?

A. Right.

(Testimony of Joseph W. Hall.)

Q. And was some of it in the form of a beach?

A. Yes; a portion of it is a kind of a high rocky ridge and a large portion is a sandy beach.

Q. How many shore feet would you think there was of sandy beach?

A. About 500 feet, I should think, about that much.

Q. Now, this particular property that you purchased, is there any certain name for it that identifies it now?

A. It is called Elks Point.

Q. Called Elks Point. And where is it with respect to Zephyr Cove?

A. It is about a mile and a half south of Zephyr Cove.

Q. And do you recognize the portion you purchased in 1903 for \$1.25 an acre?

A. It is here (indicating).

Q. Explain on the map what portion it is there.

A. It is marked red on the map, the blue dot.

Q. Well, we have so many colors on here. I think it is kind of a rust, isn't it, because we have a red up there (indicating). Isn't that a rust color with a green dot? [254]

A. Yes, it is.

Q. At any rate, on the margin of this map besides this square of color with the green dot there is the notation "Purchased by Joseph M. Hall in 1903, 25.15 acres at \$1.25 an acre."

A. That is right.

Q. That is right, is it?

A. Right.

Q. Well, now, did you purchase any other land

(Testimony of Joseph W. Hall.)

about that time up on the Nevada side of Lake Tahoe, either yourself or in company with anyone else?

A. Yes, I purchased about 8.58 acres up on Skunk Harbor along with another friend of mine.

Q. About eight——

A. (Interposing) Eight and a half acres.

Q. In 1903?

A. That is right.

Q. Well, now, do you recognize that as the item on this map that you are looking at, Respondent's Exhibit L, as in red?

A. It is in bright red.

Q. Bright red. Well, now, did you purchase any other land on Lake Tahoe on the Nevada side at any time? A. No.

Q. This (indicating)?

A. No: I sold that as an agent. [255]

Q. Oh, I beg your pardon.

Now, did you hold this property that you did purchase; I mean, did you have it for sale at all times after you bought it?

A. No, sir; I just held it. I did give an undivided one-half interest in that 25 acres to friends of mine as a Christmas present.

Q. When did you do that?

A. Well, I think about '6, '7, or '8, after I had held it for two or three years.

Q. Well, would you have sold this property in there if you could have sold it at a profit in those early days? A. Well, I never intended to.

(Testimony of Joseph W. Hall.)

Q. Well, as a matter of fact, though, did you ever sell the property?

A. Yes, I sold part of it.

Q. What part did you sell?

A. I sold 23 acres.

Q. 23 out of the 25 and a fraction?

A. Yes, sir.

Q. And the two and a fraction acres you retained was that of the beach? Does that contain the good beach you were telling about?

A. Yes; we two owners sold it all except we retained an acre for each party on the beach. [256]

Q. And when did you sell that, Mr. Hall?

A. In 1925.

Q. And what did you sell that 23 and a fraction acres for? A. \$5,000.

Q. Now, you are speaking of the place known as Elks Point? A. Elks Point.

Q. Who did you sell it to?

A. I sold it to the Elks Tahoe Association.

Q. You sold that 23 acres at a ratio of about a hundred to one between 1903 and 1925; isn't that right? A. Oh, more than that.

Q. A little more than a hundred to one?

A. Yes, sir.

Q. You have been in the real estate business actively since 1920? A. Yes, sir.

Q. And you owned this property up there since 1903 and I understand you have been familiar with the lake more or less all that period; is that right?

A. That is right.

(Testimony of Joseph W. Hall.)

Q. When do you think the climb started in that value between 1903 and 1925?

A. I think activity showed itself along about 1922, '3 and '4. That was the beginning of it to any extent.

Q. Do you think that the main difference between that \$1.25 [257] an acre and the hundred and some dollars an acre you got actually started in about 1922?

A. It began to climb up slowly but there was not much appreciable activity until along about in the 1920s.

Q. Now, did you ever as a broker act in any other sales of land on the Nevada side of Lake Tahoe?

A. Yes, I sold some property on Skunk Harbor.

Q. Will you look on this map, Respondent's Exhibit L, and identify that land that you sold for someone?

A. It is the portion here in brown (indicating), checked off.

Q. In brown hatch? A. Brown hatch.

Q. Does it have some numbers and circles on it for lots?

A. Yes, lots 1, 2, 3, and 4 in the northeast quarter and the southeast quarter.

Q. Well, now, that location is correct on the map, is it? A. That is correct.

Q. Well, then, the markings I have on that, where I have Secret Harbor, that is a mistake?

A. That should be Skunk Harbor.

(Testimony of Joseph W. Hall.)

Mr. Murray: I am going to change that in pencil subject to check.

The Member: Yes.

Q. (By Mr. Murray) Now, for whom did you sell this property, Mr. Hall, that you have identified here on Skunk Harbor? [258]

A. I sold it for Lord Russell of England.

Q. And when did you sell it? A. In 1922.

Q. In 1922. How many acres were involved approximately? A. Approximately 290 acres.

Q. How much shore frontage?

A. It must be a full mile.

Q. And how much did you sell it for?

A. I sold that for \$5500.

Q. \$5500 for 290 acres?

A. 290 acres, about.

Q. Now, what was the character of the mile of shore?

A. It was a very fine harbor, sandy harbor in the southeast portion, and beyond that it was rather precipitous and rocky.

Q. Well, in the sandy harbor that you speak of is there also a beach?

A. There is a very fine beach.

Q. Very fine beach? A. Yes, sir.

Q. Well, do you know off-hand how much that figures an acre; I mean, I can figure it myself, 290 acres.

A. About a hundred and ninety. I should judge, 180 or 190.

(Testimony of Joseph W. Hall.)

Q. Anyhow, it was for \$5000?

A. No, \$5500. [259]

Q. It was how many acres? A. 290 acres.

Q. Did you ever get any inquiries about the Elks Point property asking you if you were interested in selling it, or was there anything said about it in between the dates of 1903 and, say, 1920?

A. No.

Q. Do you have any idea as to why you probably didn't get any inquiries about it?

Mr. Helvern: I object because that is a speculative question.

The Member: Yes; I don't think that is within the realm of expert knowledge.

Q. (By Mr. Murray) Well, to your knowledge was there any demand for property during the years 1913 to 1920 or so around Elk Harbor or Elk Point, this property you owned?

A. Not to my knowledge.

Q. When you first started going up to the lake around 1901 did you have any occasion to go over to the California side of the lake?

A. I went—I camped up there about 1912 at State Line Hotel, and we came up by way of Truckee and around by boat and landed at the pier.

Q. Where, please?

A. At Lakeside Park or State Line. [260]

Q. I see. Well, did you go over around Tahoe City at that time?

A. Oh, I guess we went through it.

(Testimony of Joseph W. Hall.)

Q. What was the development of that portion of the lake, the northwest portion of the lake in 1912?

A. Well, that was developing after the railroad was brought in.

Q. Do you know when the railroad was brought in?

A. I think about '2 or '3 but I am not positive.

Q. 1902 or '3? A. I think so.

Q. And that development was pretty much advanced in 1912, then, was it?

A. Fairly well advanced.

Mr. Murray: I think that is all.

The Member: Cross examine?

Mr. Helvern: No questions.

The Member: That is all, sir.

Witness Excused.

The Member: Call your next?

Mr. Murray: Mr. Boyle.

JOHN T. BOYLE

a witness on behalf of Respondent, was duly sworn and testified as follows:

The Clerk: State your full name, please. [261]

The Witness: John T. Boyle, B-o-y-l-e.

Direct Examination

Q. (By Mr. Murphy) Mr. Boyle, what is your occupation?

(Testimony of John T. Boyle.)

A. Oh, I am a clerk in the Trust Department of the Crocker First National Bank.

Q. Do you have in your hand there a document from the Trust Department of the Crocker First National Bank respect to the Estate of Elizabeth Beatty?

A. Not the Estate of Elizabeth Beatty, no.

Q. Will you tell me what it is, please?

A. Well, this is our file of an agency account that we had for Mrs. Elizabeth Beatty prior to her death and this file contains a memorandum of the sale of a piece of property in Lake Tahoe.

Q. Well, that is it.

A. It was sold prior to her death.

Q. Does it give a description of the property at Lake Tahoe that was sold?

A. Well, the description as shown in our records here is lots, 1, 2, 3 and 4, Township 14, Range 18, Douglas County, Nevada, 153 acres.

Q. And does your record show when that property you have just described was sold by the Elizabeth Beatty Estate?

A. Well, it was sold by Mrs. Beatty in her lifetime, not by her estate. [262]

Q. Oh, I beg your pardon.

A. It was sold on August 12, 1921.

Q. August 12, 1921. And does it show the price at which—

A. (Interposing) \$4000. She had a quarter interest in it by the way, but the total price was \$4000.

(Testimony of John T. Boyle.)

Q. Yes. Does your record show how many shore feet on the lake there were?

A. No; the only description we have is that which I have given you, just those lots.

Mr. Murray: That is all.

The Member: Any objections?

Mr. Helvern: No questions.

The Member: That is all, sir.

Witness Excused.

The Member: Call your next witness.

Mr. Murray: I will call Mr. Howell, please.

JAMES B. HOWELL

a witness on behalf of Respondent, was duly sworn and testified as follows:

The Clerk: State your full name, please.

The Witness: James B. Howell, H-o-w-e-l-l.

Direct Examination

Q. (By Mr. Murray) Mr. Howell, will you state what your occupation is? [263]

A. I am an industrial engineer and specialize in the management of properties. I handle all of Mr. George Whittell's properties in San Francisco and represent him also in his properties in Nevada.

Q. Mr. George Whittell was the purchaser of the land—I withdraw that, please.

I show you a map which is Respondent's Exhibit L in evidence, and ask you if you can locate the prop-

(Testimony of James B. Howell.)

erty on this map which was purchased by Mr. George Whittell from the Carson and Tahoe Lumber Company in 1938?

A. (Examining map) Subject to checking the map indicates that the property purchased by him is hatched in red.

Q. Were you present at the negotiations for the purchase by Mr. Whittell of this land that is hatched in red here on this map?

A. I carried on all negotiations connected with the purchase with the exception of the initial negotiation which was conducted by Mr. Larson. Mr. Larson saw Mr. Frank Murphy who was Vice President and Mr. Murphy said he would sell the property to Mr. Whittell at an agreed figure. I then conducted my negotiations with Mr. Norman McLeod, between Mr. Murphy and Mr. McLeod. Then, the entire transaction was handled through the Title Company.

Q. Well, did you understand that Mr. Murphy had authority to deal for this Carson and Tahoe Lumber Company? [264]

Mr. Helvern: I object. It is incompetent, irrelevant and immaterial.

The Member: Well, I will sustain the objection on that. If anything were said by any officer of the Petitioner company, but what this witness' understanding is is irrelevant.

Mr. Murray: Yes.

Q. (By Mr. Murray) Did Mr. Murphy indicate to you or say to you that he could sell this property to Mr. Whittell, this property here in question?

(Testimony of James B. Howell.)

Mr. Helvern: I object upon hearsay evidence.

The Member: Overruled.

Mr. Helvern: Leading.

The Member: I will sustain it as to the leading.

Q. (By Mr. Murray) Well, what transactions did you actually carry on with Mr. Murphy, you acting in behalf of Mr. Whittell, for this land that you have just identified on the map?

A. Mr. McLeod phoned Mr. Murphy and stated that he understood—I was in his office—he understood that Mr. Murphy had agreed to sell this land to Mr. Whittell for the agreed sum and Mr. Murphy said that it was correct and that he would come to San Francisco. I met Mr. Murphy in the Palace Hotel several days afterwards and the deal was concluded. It was a normal business transaction.

Q. Were any papers signed at that time?

A. My recollection is that we had a receipt for the original [265] deposit.

Q. And by whom was the receipt signed?

A. That I can't say. I think it was Mr. Murphy. I think the deposit was—I would have to refer to my records, your Honor, on that. We had so many purchases at the lake.

Q. Well, during the negotiations for the purchase by Mr. Whittell of this land in question were the relative values of the lands and the plats discussed in building up to the purchase price?

A. No, neither Mr. Murphy nor Mr. McLeod or myself discussed the relative values of any portion of the land purchased.

(Testimony of James B. Howell.)

Q. Did Mr. Whittell originally wish to buy all of this land here in question from Carson and Tahoe Lumber Company?

Mr. Helvern: I object on the grounds it is incompetent and irrelevant as to how much land he wished to buy.

The Member: If it is preliminary to some other question; I will overrule it at this time, however.

Mr. Murray: Yes.

A. Mr. Whittell desired to buy all the remaining holdings of the Carson and Tahoe Lumber and Fluming Company land in Nevada.

Q. (By Mr. Murray) Now, are you familiar with the land on the Nevada side of Lake Tahoe which is referred to as Skyland?

A. I am. [266]

Q. I show you a map which is Respondent's Exhibit L in evidence and ask you if you can locate the land known as Skyland and indicate it by a color on this map?

A. (Examining map) It seems to be indicated in yellow. May I refer to my maps, your Honor?

Mr. Murray: Yes.

The Member: Yes.

The Witness: It is indicated in yellow.

Q. (By Mr. Murray) On this map in evidence?

A. On this map.

Q. Who owns that land now?

A. Mr. George Whittell.

Q. When did he acquire it?

A. May I refer to my records?

(Testimony of James B. Howell.)

Q. Yes.

A. 1/21/38; January the 21st, 1938.

Q. January 21, 1938 Mr. Whittell bought Skyland that you have identified on the map?

A. Yes, sir.

Q. From whom did he purchase it?

A. Daly.

Q. A man by the name of Daly? A. Yes.

Q. How much did Mr. Whittell pay for Skyland?

A. \$60,000.00 [267]

Mr. Helvern: I object. This is incompetent, irrelevant and immaterial, 1938.

The Member: Overruled.

The Witness: Your Honor, I might explain—

The Member: I might say that I don't know what the exact probative value of a sale so far removed would have but I would consider it technically and legally relevant.

Go ahead.

Mr. Murray: If your Honor please, this is the same land that the taxpayer sold in '23 for \$9000.

The Member: All right.

Q. (By Mr. Murray) Mr. Whittell bought it for \$60,000, is that right? A. \$60,000.

Mr. Murray: That is all.

The Member: Any questions?

Mr. Helvern: No questions, your Honor.

The Member: That is all, Mr. Howell. Thank you.

Witness Excused.

The Member: Do you have a short witness, Mr. Murray?

Mr. Murray: Well, something along this line; I have three or four like that.

The Member: We will take a recess at this time.

Mr. Murray: All right.

(Whereupon a short recess was taken after which the [268] proceedings were resumed as follows:)

The Member: Call your next witness, Mr. Murray.

Mr. Murray: I will call Mrs. Allerman.

MRS. FRED ALLERMAN

a witness on behalf of Respondent, was duly sworn and testified as follows:

The Clerk: State your full name, please.

The Witness: Mrs. Fred Allerman, A-l-l-e-r-m-a-n.

Direct Examination.

Q. (By Mr. Murray) Mrs. Allerman, would you state for the record where you were born?

A. In Glenbrook, Nevada.

The Member: Where?

The Witness: Glenbrook, Nevada.

Q. (By Mr. Murray) Speak up as best you can, won't you? A. I will.

Q. That is on the east side of Lake Tahoe, is it not? A. Lake Tahoe, yes.

Q. And did you spend a number of years on the Nevada side of Lake Tahoe?

(Testimony of Mrs. Fred Allerman.)

A. Well, I was there all my life until I was married.

Q. You were there all your life until you were married? A. Yes, sir.

Q. When were you married, Mrs. Allerman? [269]

A. 1904.

Q. What was your name before you were married? A. Laura McFaul.

The Reporter: Spell it, please.

The Witness: M-c-F-a-u-l.

Q. (By Mr. Murray) Did you say you were married in 1904? A. Yes, I was.

Q. Then, where did you move when you were married?

A. Right where we are now, in Douglas County.

Q. Where is that, please?

A. Right below the Kingsbury grade.

Q. In Gardnerville, isn't it?

A. In Gardnerville.

Q. How far is that from Lake Tahoe, we will say, from Glenbrook?

A. Well, it is about 7 miles from Lake Tahoe.

Q. That is over the Kingsbury grade, you say?

A. Yes, sir.

Q. Then, you have spent the rest of your life there so far? A. Yes, sir.

Q. Where did you live most of the time that you lived at Lake Tahoe? A. On the Marley ranch.

The Reporter: Spell it, please.

The Witness: M-a-r-l-e-y. [270]

(Testimony of Mrs. Fred Allerman.)

Q. (By Mr. Murray) On the Marley ranch. Where is that located with respect to Zephyr Cove?

A. Well, it was south about a mile, about a mile south of Zephyr Cove.

Q. I will show you a map which is in evidence as Respondent's Exhibit L. This is a Nevada State Highway map which shows a section of the Nevada coast line of Lake Tahoe, and if I tell you that the place I am pointing to with my pencil is Zephyr Cove can you indicate for me on the map where the Marley ranch is?

A. Well, it is just about here (indicating).

Q. Was it on the lake front; I mean, did the ranch come out to the lake front?

A. Yes, it did.

Q. And what is the name, if any, of the bay that it was located on? A. Well, Marlay Bay.

Q. Well, is that not called Marla Bay now, M-a-r-l-a? A. Yes, Marla Bay.

Q. Now, who owned this ranch that you are speaking of on which you lived most of your time up at the lake?

A. Well, my father owned it.

Q. And is your father living now?

A. No, he is not.

Q. When did he die? [271] A. In 1912.

Q. About how many acres were in the ranch that your father owned in the early days that you speak of?

A. There was 160, we always called it; 152, or something.

(Testimony of Mrs. Fred Allerman.)

Q. Well, was it 160 with the broken shore line?

A. 160, yes.

Q. Well, after you left home and went down to live at Gardnerville did you keep in touch with your father and mother up to the time of their death?

A. Oh, yes, sir.

Q. And did you see them quite often?

A. Oh, yes, I did.

Q. And do you know whether or not your father ever purchased any more land near or adjoining the Marley ranch? A. Yes, he did.

Q. Do you remember where it was located with respect to the Marley ranch?

A. Well, it was just south of our place.

Q. Did it adjoin it? A. Yes, sir.

Q. And did it have any fronting on Lake Tahoe?

A. Well, it had some, yes.

Q. And is there any special name that that property you say he purchased was known by ordinarily?

A. We always called it Round Mountain. [272]

Q. You always called it Round Mountain?

A. Yes, sir.

Q. Do you know how many acres were included in that parcel?

A. I don't exactly know the acres.

Q. Did it adjoin the Marley ranch on the north or the south? A. The south side.

Q. It adjoined it on the south?

A. Yes, sir.

Q. And do you recall when your father purchased that Round Mountain property?

(Testimony of Mrs. Fred Allerman.)

A. In 1911.

Q. Do you know who he purchased it from?

A. The Dangberg Company.

Q. The Dangberg Company of Minden?

A. Of Minden, yes.

Q. Minden, Nevada. Do you know what your father paid the Dangberg Company?

A. He paid \$200.

Q. He paid \$200 for the Round Mountain property? A. Yes, he did.

Q. What portion of Marla Bay on Lake Tahoe was taken up in shore line by your father's ranch and Round Mountain?

A. Well, it took up all the lake frontage.

Q. It took up all of Marla Bay? [273]

A. Yes.

Q. Where is Marla Bay with respect to Zephyr Cove?

A. Well, it is just between Round Top Mountain and Zephyr Cove.

Q. Well, no; Marla Bay with respect to Zephyr Cove, I say where is it? Is it north or south?

A. Well, it would be south.

Q. How near is it with respect to bays? Is it the next bay south? A. Yes, sir.

Q. Are you familiar with the property that is known as Zephyr Cove up there?

A. Oh, yes.

Q. You have been on it many times?

A. Oh, yes. [274]

(Testimony of Mrs. Fred Allerman.)

Q. (By Mr. Murray) Well, the place that your father owned, the Marley ranch, did that have a beach on it? A. Oh, yes.

Q. Was it a nice beach, in your opinion?

Mr. Helvern: Objection, your Honor.

The Member: Sustained.

Mr. Murray: That is all, if your Honor please.

The Member: Any cross examination?

Mr. Helvern: No questions.

The Member: That is all, Mrs. Allerman.

Witness Excused.

The Member: Call your next.

Mr. Murray: Mr. McFaul, please.

JOSEPH ALLEN McFAUL

a witness on behalf of Respondent, was duly sworn and testified as follows:

The Clerk: State your full name, please. [275]

The Witness: Joseph Allen McFaul.

The Reporter: Spell the last name, please.

The Witness: M-c-F-a-u-l; Joseph Allen, A-l-l-e-n, McFaul.

Direct Examination.

Q. (By Mr. Murray) Mr. McFaul, what is your present occupation?

A. Just working in the timber and working around, general work.

(Testimony of Joseph Allen McFaul.)

Q. Working in timber. What kind of timber work do you do?

A. Most any kind of timber work, cutting wood or logs.

Q. Do you cut wood out of the forests?

A. Well, no, it is not in the forest.

Q. Where is the wood that you cut?

A. Cutting—it is for Fred Allerman; it is on the west side.

Q. Well, you mean to say it is property owned by Fred Allerman?

A. Yes, sir.

Mr. Helvern: I can't hear this witness.

The Member: Speak a little louder, Mr. McFaul, so counsel at the table can hear.

Q. (By Mr. Murray) How long have you been working in the wood business, as you call it?

A. Practically all my life.

Q. Where were you born, Mr. McFaul?

A. I was born at Zephyr Cove at Lake Tahoe.

[276]

Q. And how old were you when you left Zephyr Cove, do you know?

A. Well, I was only small when I left Zephyr Cove.

Q. Well, when you left Zephyr Cove wheer did you go to live?

A. We moved over to the old home ranch at Marla Bay.

Q. That is what you refer to as the home ranch?

A. Yes, sir.

Q. Who owned that ranch?

A. My father.

(Testimony of Joseph Allen McFaul.)

Q. How long did you live there?

A. Well, I stayed there practically until 1913.

Q. Were you old enough to work before 1913?

A. Yes, sir.

Q. And how were you occupied between 1910 and 1913, we will say?

A. We were working around there cutting wood for different parties.

Q. Well, when you say "Cutting wood," what do you mean, Mr. McFaul?

A. Well, it is just cutting four-foot wood.

Q. Cordwood? A. Cordwood.

Q. Is that the only kind of wood that you ever had experience in cutting? [277]

A. That was practically all.

Q. And was your father in the wood business?

A. He was.

Q. And you were associated with him?

A. Yes, sir.

Q. Did you leave the home place, as you call it, at Marla Bay in 1913? A. Yes, I did.

Q. Then, where did you go?

A. I came over into California, down to Merced Falls.

Q. For how long were you——

A. (Interposing) I went down there for seven years.

Q. Until 1920, about? A. About that.

Q. And then where did you go to live?

A. Then, I went from there into the Imperial Valley.

(Testimony of Joseph Allen McFaul.)

Q. Well, do you remember the condition of the roads near your home place, the location of your home place in 1913? A. Yes, I do.

Q. What were they like?

A. It was just ordinary roads, graveled roads, county roads; dirt roads, I should say.

Q. Do you remember the condition of the roads to and from Carson City and Minden to Lake Tahoe in those days? A. Yes, I do. [278]

Q. What kind of roads were they?

A. They were just dirt roads.

Q. Do you know whether or not many people came in and out of there during those days?

A. Well, there was quite a few; of course, nothing in comparison to now.

Q. How did they come in, those that came in those days?

A. Well, most of them came with horses and wagons. There was a few automobiles, but not many at that time.

Q. Did you ever hear of Zephyr Cove being offered for sale in the early days?

Mr. Helvern: I object to hearsay evidence, your Honor.

The Member: Objection sustained.

Mr. Murray: That is all.

Mr. Helvern: No questions.

The Member: That is all, Mr. McFaul.

Witness Excused.

Mr. Murray: I will call Mr. Jepsen.

HANS R. JEPSEN

a witness on behalf of Respondent, was duly sworn and testified as follows:

The Clerk: State your full name, please.

The Witness: Hans R. Jepsen, J-e-p-s-e-n.

Direct Examination [279]

Q. (By Mr. Murray) Mr. Jepsen, what is your occupation?

A. County Clerk and Treasurer, Douglas County, Nevada.

Q. And how long have you been the County Clerk and Treasurer of Douglas County, Nevada?

A. Nineteen years.

Q. As such you have custody of all the court records in that county, do you?

A. I have.

Q. Do you have with you the original Probate file in the Estate of Duane Leroy Bliss, deceased?

A. I have.

Q. Will you produce it, please?

A. (Witness produces file.)

Q. Will you show me the inventory and appraisal of real property from that file?

Mr. Helvern: I would like to see what this document is.

Mr. Murray: All right. Here is a certified copy.

Mr. Helvern: (Examining document) Your Honor, this appears to be an inventory and appraisal of the Estate of Duane Leroy Bliss. I object to the introduction of this in evidence as incompe-

(Testimony of Hans R. Jepsen.)

tent, irrelevant and immaterial, as not germane to the present issue and as not being competent in any respect to prove the values we are here trying to establish for these lands.

Mr. Murray: I haven't even offered it yet, if your [280] Honor please.

The Member: I assume that this inventory and appraisal will contain some land up near Tahoe?

Mr. Murray: It contains Zephyr Cove. It was testified to by Mr. Bliss himself yesterday.

The Member: Objection overruled.

Mr. Helvern: Might I make this one statement?

The Member: Yes, sir.

Mr. Helvern: The values stated in this are based upon the appraiser, I believe, or some political appointee of the State of Nevada and as such I object to this evidence as having no bearing upon the present case, as not being expert evidence of any sort. The person who made that appraisal is, I believe, now dead, in any event cannot be questioned as to his ability or knowledge of the land.

The Member: Objection overruled.

Mr. Murray: Well, if your Honor please, I have a certified copy of this document which was introduced—I mean, which was marked for identification yesterday as Respondent's Exhibit A. Therefore, I ask that it be received in evidence as Respondent's Exhibit A.

The Member: I assume the objection is the same to that?

(Testimony of Hans R. Jepsen.)

Mr. Helvern: Same objection. It does not appear to be the opinion of an expert. [281]

The Member: The same ruling will be made. It will be admitted in evidence.

The Clerk: Marked as Exhibit A in evidence.

(The inventory and appraisement so offered and received in evidence were marked Respondent's Exhibit A, and were made a part of this record.)

Q. (By Mr. Murray) Do you have with you the probate file of the Estate of Elizabeth T. Bliss, deceased, Mr. Jepsen?

A. Yes, I have.

Q. Will you produce the inventory and appraisement in the Estate of Elizabeth T. Bliss, deceased?

A. (Witness produces file.)

Mr. Helvern: Your Honor, I offer the same objection to this.

The Member: The same ruling. I take it that this is the same matter concerning which Mr. Bliss was cross examined yesterday.

Mr. Murray: Well, not with respect to Mr. Bliss' mother, Elizabeth T. Bliss. I only went some distance with him on the estate of his father.

The Member: The same property, is it not?

Mr. Murray: Yes, the same property.

The Member: Objection overruled.

Mr. Murray: Well, I therefore offer in evidence the [282] document which was marked for identification as Respondent's Exhibit G.

(Testimony of Hans R. Jepsen.)

Mr. Helvern: Same objection on the same grounds.

The Member: The same ruling.

(The inventory and appraisement so offered and received in evidence were marked Respondent's Exhibit G and were made a part of this record.)

Mr. Murray: The document I offered, by the way, is a certified copy of the inventory and appraisement in the Estate of Elizabeth T. Bliss, deceased.

Q. (By Mr. Murray) Now, I show you this inventory and appraisement of the Estate of Elizabeth T. Bliss, deceased, Mr. Jepsen, and ask if your name appears on that anywhere, other than as clerk, of course?

A. (Examining document) Yes, it does.

Q. Did you serve in some capacity in connection with that inventory and appraisement?

A. I served as an appraiser.

Q. And was this appraisal of this real property made by you?

A. Made on the 26th day of October, 1921.

Mr. Murray: That is all, if your Honor, please.

The Member: Any cross examination?

Mr. Murray: I beg your pardon, sir. That is all on that document.

The Member: You have other questions? [283]

Mr. Murray: I probably have another question or two to ask him, yes.

(Testimony of Hans R. Jepsen.)

Q. (By Mr. Murray) When you acted as an appraiser in the Estate of Elizabeth T. Bliss and placed the valuation that you have placed on the different properties described therein, what value did you consider you were placing on there?

A. We placed a value as it appeared as of that date.

Q. The value as of the date of the appraisal?

A. As of the date the appraisal was made.

The Member: You are county clerk of what county, Mr. Jepsen?

The Witness: Douglas County.

The Member: What is the county seat?

The Witness: Minden.

Mr. Murray: That is all.

The Member: Cross examine.

Cross Examination

Q. (By Mr. Helvern) Mr. Jepsen, how old are you? A. 41.

Q. And I understood you to say that for 19 years you have been in your present office?

A. That is right.

Q. What did you do prior to nineteen years ago?

A. Nineteen years ago would be approximately 1923, would it not? I worked for the Forest Service. [284]

Q. The Forest Service?

A. Prior to that time, yes.

Q. And you were the appraiser who appraised this Estate of Elizabeth T. Bliss?

(Testimony of Hans R. Jepsen.)

A. One of them, yes.

Q. And that happened in October 1921?

A. Yes, sir.

Q. You stated that you had appraised this at its value at date. What kind of value—will you further describe the value you were thinking in terms of when you made that statement?

A. Well, the value that lands were being at that time sold for at Lake Tahoe.

Q. Were you familiar with the value at which lands were being sold at that time in the vicinity of Lake Tahoe?

A. Yes, I believe I was.

Q. How did you obtain your familiarity with that?

A. Well, being connected with the Forest Service I had values of land—

Mr. Murray: (Interposing) Speak a little louder, please.

The Witness: I said having previously been connected with the Forest Service I had some idea of values of land.

Q. (By Mr. Helvern) In your connection with the Forest Service did you buy land for the Government? [285]

A. I did not.

Q. Well, how did your connection with the Forest Service acquaint you with the selling prices of lands or the asking prices of lands in that vicinity?

A. Well, nothing other than knowing the values of lands for grazing purposes and timber purposes.

(Testimony of Hans R. Jepsen.)

Q. How did you determine the value for grazing purposes?

A. Well, I handled the collection of grazing fees for the Forest Service for the three years that I was with them.

Q. Grazing rental fees. You knew what they were collecting for rentals? A. Yes, sir.

Q. Do you have any knowledge of the value at which lands were being sold, these grazing lands or other lands in that vicinity?

A. Well, nothing definite, no.

Q. No actual knowledge, then, of any actual sales that were consummated; is that true?

A. Well, I know I was not interested in any sales.

Mr. Helvern: On the evidence of this witness I again move that his appraisalment and his testimony be stricken from the record as being irrelevant and not having any value in this case.

Mr. Murray: If your Honor please——

The Member: (Interposing) Overruled. [286]

That is all, sir. You may step down, Mr. Jepsen.

Witness excused.

The Member: Call your next.

Mr. Murray: Mr. Park, please.

WILLIAM D. PARK

a witness on behalf of Respondent, was duly sworn and testified as follows:

The Clerk: State your full name, please.

The Witness: William D. Park, P-a-r-k.

Direct Examination

Q. (By Mr. Murray) What is your occupation, Mr. Park?

A. Sheriff and Assessor of Douglas County, Nevada.

Q. Sheriff and Assessor. How long have you been Assessor in Douglas County, Nevada?

A. Since January 1, 1923.

Q. And as Assessor you have custody of all the assessment rolls of Douglas County, do you?

A. I have.

Q. Do you have with you the assessment rolls of Douglas County for the years 1912 and '13?

A. I have.

Q. Will you turn to the page of the assessment roll which contains the assessment of the property in Douglas County owned by Carson and Tahoe Lumber and Fluming Company? [287]

A. For 1912?

Q. For 1912? A. Yes, sir.

Q. Is that the document you have before you?

A. It is.

Q. Will you state how many acres of land in Douglas County Carson and Tahoe Lumber and Fluming Company were assessed for in the year 1912? A. There was 15,471.

(Testimony of William D. Park.)

Q. (Mr. Murray indicates on document).

A. Yes, 1,886.

The Member: What is that? 15,000 and 1,800?

The Witness: Yes, 15,471 and 1,886.

Q. (By Mr. Murray) The Carson and Tahoe Company was not assessed for any other lands in Douglas County?

A. Not according to this record.

Q. I ask you what was the assessment rate on the acreage that you have just described?

A. \$1.25.

Q. One dollar and a quarter what?

A. An acre.

Q. Is there any segregation shown as between one grade of land and another?

A. None at all.

Q. All assessed at \$1.25 an acre? [288]

A. Yes, sir.

Q. As the same kind of land? A. Yes, sir.

Q. Do you happen to know from looking at those descriptions where in Douglas County this land is located generally? A. I do.

Q. Where.

A. It is on the Nevada side of the lake or east side of the lake.

Q. I will show you a map which is Respondent's Exhibit K in evidence and ask if you can read this map.

A. (Examining map) I can.

Q. I will ask you if you can show generally in the colors that are blocked out on the east side of

(Testimony of William D. Park.)

Lake Tahoe in Nevada what land is embraced in the land that was assessed to the Carson and Tahoe Company in 1912?

A. It is that in green.

Q. Well, in the green——

A. (Interposing) And the black.

Q. The black hatch? A. Yes, sir.

Q. Then, all the land indicated in green and in black, heavy black hatch, is the land that was assessed to Carson and Tahoe? A. Yes, sir.

[289]

Q. It was all assessed at the same rate of \$1.25 an acre? A. Yes, sir.

Q. Now, does this page of this assessment roll indicate anything else with respect to the Carson and Tahoe Company in 1912?

A. Well, it shows there were 613 acres that was delinquent and sold for taxes, sold at a delinquent sale January 20, 1913, to S. C. Bigelow for \$26.00.

Mr. Murray: Now, I have a copy of that page which was made by the Clerk, Mr. Jepsen, who was on the stand, and subject to your comparison I wonder if you would permit me to put that into evidence rather than putting the assessment roll in?

Mr. Helvern: Yes, no objection to that.

The Member: Accepted in evidence.

Mr. Murray: Well, this document was marked for identification as Respondent's Exhibit C yesterday. I now offer it in evidence.

The Member: Accepted in evidence.

(Testimony of William D. Park.)

The Clerk: Exhibit C.

(The page of assessment roll, so offered and received in evidence, was marked Respondent's Exhibit C, and was made a part of this record.)

Q. (By Mr. Murray) Now, Mr. Park, I understood you to say you became Assessor of Douglas County in what year? [290] A. 1923.

Q. And did you know the general character of the land on the east side of Lake Tahoe in 1923?

A. Well, I just became acquainted with it in 1923.

Q. You just became acquainted? You didn't know anything about it before that?

A. No, I did not. I did not pay any attention to it before. I had been up there lots of times but never paid any particular attention to that land.

Q. Well, when you became assessor how was that land being assessed at that time with respect to gradation or classification?

A. Well, it was assessed at—some at grazing land and some at pasture land and some at—mostly mountain land, though.

Q. Mostly mountain land? A. Yes, sir.

Q. When you first came in do you recall how much the mountain land was being assessed for in that locality?

A. Yes; I think it was \$1.25 an acre.

Q. Do you recall what the grazing land was being assessed for then?

(Testimony of William D. Park.)

A. There was three different classes. There was grazing first class at \$8.00, second class at \$5.00 and third class at \$3.00.

Q. The second at \$5.00 and the third at——

A. (Interposing) \$3.00. [291]

Q. And the mountain lands \$1.25 an acre?

A. Yes, and some at \$2.00.

Q. That was in 1923? A. Yes, sir.

Q. Now, when was the first time that you—well, did you at some subsequent date make further classification of this land? A. Yes, I did.

Q. About when did you do that?

A. Well, right in '23. It started to—land started to go up along about '23 and every year after that it raised and raised.

Q. I see, but until '23 neither you nor your predecessor had classified it any way but as you have said and at those rates? A. That is right.

Mr. Helvern: If your Honor please, it has not been introduced in evidence as to what his predecessor did excepting for the year 1912.

Do you wish to show what the predecessor did in the intervening years from 1912 to '23? That has not been shown.

Mr. Murray: Well, I will ask Mr. Park what the situation was with respect to classifications when he came in. I think that is in evidence.

The Member: I think he has already testified that [292] the classified mountain land was \$1.25 or \$2.00 and grazing land at \$8.00, \$5.00 and \$3.00, depending upon the grade.

(Testimony of William D. Park.)

Mr. Murray: Yes.

Q. (By Mr. Murray) I will ask him now: Was there any division for lake front at all at that time? A. No, none at all, no.

Q. Well, when was the first time that you started to assign a special value to lake front property?

A. I think in 1927 or '8, somewhere along there.

Q. Will you state the reasons why you did it at that time?

A. Well, the land along the lake shore became more valuable and it was selling at pretty good prices.

Q. At what time?

A. Well, I think it might have been as early as '26 and from then on until up to '30, '31 or '32.

Mr. Murray: That is all, Mr. Park.

The Member: Cross examine.

Mr. Helvern: Just a moment.

Cross Examination

Q. (By Mr. Helvern) Mr. Park, you stated that in 1912, and you looked at the record and indicated that no distinction was made between the different kinds of land assessed against Carson and Tahoe. Have you the records here for the subsequent years? A. No, I have not. [293]

Q. You have not? A. No.

Q. Do you know when any distinction or any change from \$1.25 per acre occurred in the assessment rolls? A. No, I do not.

(Testimony of William D. Park.)

Q. You did not acquaint yourself with those records? A. No.

Q. And you do not know? A. No.

Q. In 1923 certain changes had occurred; is that so? A. They did.

Q. And your immediate predecessor, the records show that he had made certain changes, or did you make those changes?

A. Well, I don't know whether he had or not, but I did in '23.

Q. Just the year before 1923 you don't know your predecessor——

A. (Interposing) Well, yes, I know there were some changes made but I don't know just what they were.

Q. Well, tell me, Mr. Park, when you first became assessor, how did you proceed to assess all this land? Did you pay any attention to what your predecessor had done, your immediate predecessor had done with respect to any of this acreage, or did you proceed upon your own to determine that?

A. Well, with the help of the Land Commissioner of the [294] Nevada Tax Commission, he and I kind of changed it, worked it over, Mr. Charles Fulstone.

Q. Is it your recollection that you did bring in the predecessor records to any extent? With respect to that land in making valuations were you governed to any extent by that?

A. Yes, I think so.

(Testimony of William D. Park.)

Q. What was your experience prior to 1923 with respect to valuations of land in the vicinity of Lake Tahoe or anywhere?

A. I was a blacksmith; I didn't have anything to do with that.

Q. You were a blacksmith. You had had no previous experience? A. No.

Q. And you called in the help of a Land Commissioner? A. Yes, sir.

Q. Someone else?

A. Yes; he and I worked it out.

Q. In making your subsequent appraisals you have continued year after year to make appraisals of this land, have you, of all land in Douglas County? A. Oh, yes, sir.

Q. And you made the statement, I believe, that in 1928 values had increased and, therefore, you increased and segregated the land. How did you learn that values had increased?

A. By the sales.

Q. What kind of sales? All sales? [295]

A. All sales of lake shore.

Q. All sales in Douglas County?

A. Lake shore land.

Q. Where did you learn of the prices received for those lands?

A. Well, they were recorded.

Q. Pardon me. They were recorded in your records? A. No; in the Recorder's office.

Q. Not the selling price? A. No.

(Testimony of William D. Park.)

Q. The selling price is never recorded in the Recorder's records, is it? A. No, I know.

Q. Only the transfer between the parties?

A. No, but I inquired the price of land up there and I know it had gone way up to what it had been the year before.

Q. Just from inquiry you learned from hearsay, we will say—— A. Yes.

Q. (Continuing) Persons you discussed it with that land prices were going up? A. Yes, sir.

Q. Did you make any detailed study from this evidence which you had heard? Did you plat out the land to distinguish whether the last sale represented an increase over the previous sale price of the same land? A. Yes, I did. [296]

Q. And you made comparisons?

A. Every year there was increases.

Q. Each year each sale indicated an increase?

A. Well, each year. I wouldn't say each sale, but each year indicated an increase.

Q. Yes. Well, now, Mr. Parker, you were the assessor in the year 1936? A. I was.

Q. And in that year as of what date in Nevada is the assessment made? A. March 1st.

Q. March 1st? A. Yes, sir.

Q. On March 1, 1938, these lands of Carson and Tahoe which you have just discussed had previously been sold to George Whittell, is that so?

A. Yes, they had.

Q. Do you know what price they had been sold for? A. No, I do not.

(Testimony of William D. Park.)

Q. Well, you appraised the land, did you not?

A. I did.

Q. And put an estimate on it? A. I did.

Q. From your recollection do you recall if you increased your assessment any over the previous year? [297]

A. I might have a little bit but not a great deal.

Q. Just a little bit?

A. I might have a little bit; I wouldn't say.

Q. Mr. Park, this was a very important sale, was it not, a very large tract of land?

A. It was.

Q. And you know it was sold? A. Yes, sir.

Q. But you did not at that time acquaint yourself with the selling price of that very large parcel of land? A. No.

Q. Didn't that constitute a very large percentage of the land in Douglas County in value?

A. It did.

Q. Some of the most valuable land in the county?

A. But I assessed most of it just as it was before; I didn't increase it.

Q. In this particular instance you were not governed by the selling price of the land?

A. No.

Q. Were there any other instances in which you were not so governed?

A. I don't know as I understand that.

Q. Well, in this instance you were not governed?

A. Well, I tell you we had the land, as I thought,

(Testimony of William D. Park.)

at a very [298] good value. We assessed it at \$120 an acre for all lake shore land, all those subdivisions along the lake were assessed at \$120.00 an acre.

Q. Yes.

A. And some spots of pasture land was assessed separate, but the back land was assessed at \$2.00 an acre.

Q. Just a moment. Before the year 1936, Mr. Park, all of the block that was sold to George Whittell was still owned by the Carson and Tahoe Lumber and Fluming Company. Do you recall how much you assessed that land for that year?

A. No, I do not, but it was not all owned by the Carson and Tahoe Lumber and Fluming Company that Whittell bought.

Mr. Helvern: We have the tax bills here in evidence, your Honor.

Q. (By Mr. Helvern) But I will say to refresh your recollection that the records of the company show that for their 11,161 acres of land in 1937 they paid on an assessed valuation of \$58,430.00

A. Yes, sir.

Q. Does that seem about right for those lands?

A. Yes, but that isn't all the land that Mr. Whittell bought. He bought other land besides that.

Q. He didn't buy other land from Carson and Tahoe?

A. Not from Carson and Tahoe, no.

Q. Your recollection is that you did slightly in 1938 [299] increase the value of this land?

A. Yes, I think so, yes.

(Testimony of William D. Park.)

Q. Do you now know approximately the amount paid for these lands by Mr. Whittell?

A. No, I do not.

Q. If I were to tell you it was \$300,000 would it surprise you, or did you know it was about that price? A. No, it wouldn't surprise me.

Q. It wouldn't surprise you? A. No.

Q. You increased the fifty eight thousand dollar value slightly when? In the year Mr. George Whittell bought the land?

A. We might have; we took all the holdings he got and kind of reclassified it, but it wouldn't be raised very much.

Q. If you remember that this was fifty-eight thousand in 1936, if you believe that that is true, approximately how high could you have raised it in 1938, or would you rather not say? You say you raised it slightly, you believe.

A. With the other holdings, I don't know, but I think it was around ninety thousand.

Q. To \$90,000?

A. With the other holdings that he had bought.

Q. What other holdings did Mr. Whittell buy?

A. He bought Skyland Camp and he bought Spooners. [300]

Q. In Douglas County?

A. In Douglas County, yes.

Q. Do you know from whom he bought that other land, certain lands?

A. Skyland camp was from Mr. Daly, Frederick

(Testimony of William D. Park.)

Daly, and he bought Spooners from the Fulstone estate.

Q. Did he buy any from the Bliss Company, in Douglas County?

A. I don't think he did in Douglas County.

Q. Not that year; the previous year?

A. He might have, but I don't recall.

The Member: Any other questions?

Q. (By Mr. Helvern) Mr. Parker, I hand you a bill or a statement which purports to be a statement of school and county taxes in Doguas County for the year 1913 assessed to Carson and Tahoe Lumber and Fluming Company.

What is the value, the assessed value of the land shown?

Mr. Murray: If your Honor please, I don't believe this witness can identify this. He became Assessor in '23. He is handling many documents. I object to that.

The Member: I take it it is an official document of his office the same as the records which he read for 1912.

Mr. Murray: Well, I would like to look at it.

Mr. Helvern: These are official records of 1912.

Mr. Murray: (Examining documents) Yes, that is all right. I will admit this is—— [301]

Mr. Helvern: (Interposing) Official?

Mr. Murray: Yes.

Q. (By Mr. Helvern) What is the amount of the assessment for all those lands, the total assessed value? A. \$22,465.

(Testimony of William D. Park.)

Mr. Murray: No.

Q. (By Mr. Helvern) (Indicating) This figure?

A. \$22,465 and \$3,370.

Q. And a total of about \$27,000?

A. Twenty-seven thousand.

Q. Is that correct? A. Yes, sir.

Q. Approximately \$27,000. I hand you this paper which purports to be your tax bill against the Carson and Tahoe Lumber and Fluming Company for the year 1937 as per your assessment roll. In what amount is it valued as at that date?

A. \$58,430.00.

Q. \$58,430.00? A. Yes, sir.

Q. Slightly more than half, or slightly more than twice what you valued this land at in 1913?

A. Well, I didn't value it in 1913.

Q. Pardon me. Slightly more than half at which it was valued by your predecessor in 1913? [302]

The Member: Slightly more than twice.

Q. (By Mr. Helvern) Slightly more than twice.

A. Yes, sir.

Mr. Helvern: I submit as Petitioner's Exhibit the original tax bill for the year 1913 and for the year 1937.

The Member: No objection?

Mr. Murray: No objection.

The Member: Accepted in evidence.

Any other questions?

The Clerk: One exhibit, do you want this?

Mr. Helvern: One exhibit, yes.

The Clerk: Petitioner's 23.

(Testimony of William D. Park.)

(The original tax bills for years of 1913 and 1937, so offered and received in evidence, were marked Petitioner's Exhibit 23, and were made a part of this record.)

Mr. Helvern: No more questions.

Mr. Murray: One more question, your Honor please.

Redirect Examination

Q. (By Mr. Murray) Mr. Park, I understood you to say that some Land Commissioner consulted with you and advised you in fixing the assessment rolls? A. He did.

Q. Who was he? A. Charles Fulstone.

Q. Charles Fulstone. Is he the man that owns Skyland and [303] a lot of other property that we talked about yesterday here?

A. He is. He was Land Commissioner of the Nevada Tax Commission.

Q. He advised you these were the prices to place on there? A. We worked them out together.

Q. But it was his opinion, too?

A. Yes, it was.

Mr. Murray: That is all.

Mr. Helvern: No more questions.

The Member: That is all.

Witness Excused.

The Member: Call your next.

Mr. Murray: I will call Mr. Griggs.

C. C. GRIGGS

a witness on behalf of Respondent, was duly sworn and testified as follows:

The Clerk: State your name, please.

The Witness: C. C. Griggs.

Direct Examination

Q. (By Mr. Murray) Mr. Griggs, what is your present position?

A. I am technical adviser on the technical staff of the Bureau of Internal Revenue.

Q. How long have you been with the Internal Revenue Bureau?

A. About twenty years. [304]

Q. And do you have any specialty with the Internal Revenue Bureau?

A. Well, I review cases that are headed for litigation, income tax cases headed for litigation.

Q. No, but I mean what is your profession? What was your profession before you came into the Internal Revenue Bureau?

A. My profession was as mining engineer.

Q. How many years experience did you have as a mining engineer?

A. From—well, I worked during the summer vacations while I was at the University and I graduated in 1897 and until the war—I entered the army in 1918—I was active in mining operations, operating mining companies.

Q. Did you do any civil engineering?

A. I did.

(Testimony of C. C. Griggs.)

Q. And did you have experience in working on maps, making maps and surveys and all?

A. Yes, I put in nearly three years on railroad surveys and a good many years while I was operating mines I made my own surveys and made my own maps showing the operations.

Q. I will ask you: Have you ever been on the east side of Lake Tahoe, Nevada?

A. I was there during the month of May, 1941.

Q. And at that time did you have any occasion to examine certain lands there?

A. I was assisting you as counsel in preparing evidence [305] for this trial.

Q. I will show you a map which is Respondent's Exhibit L in evidence and ask you if you have ever seen that map before?

A. (Examining map) I made the map, that is, I didn't make the original map. That was made by the State Highway of Nevada, I believe, but I filled in all the colors, the property shown by the different colors.

Q. Yes. Well, now, then, are you familiar with the location on this map of Zephyr Cove?

A. I am.

Q. What color is it? Well, how would you identify it here on this map that I am showing you?

A. It is red and hatched in purple, or violet, I believe.

Q. Well, that takes in a lot of territory. You will have to be more specific.

A. Zephyr Cove is shown from——

(Testimony of C. C. Griggs.)

Q. (Interposing) From Skyland Camp and Zephyr Point? It is on the lake between Skyland Camp as marked on this map and Zephyr Point, is that it? A. It is.

Q. Were you ever on that property?

A. I was; I stayed there several days.

Q. And did you examine it? Did you find any beach there? A. Oh, yes, sir.

Q. Did you examine the beach? [306]

A. I looked at the beach.

Q. I will show you a photostat and ask you if you have ever seen that photograph before?

A. (Examining photograph) I took this photograph.

Q. And what is the photograph of?

A. I have marked it on the back, identified it as Zephyr Cove, Lake Tahoe, part of Sections 3 and 10, Township 13 north, range 18 East, Douglas County, Nevada, photographed by C. C. Griggs, May 17, 1941.

The Member: You have some other photographs there, do you, Mr. Murray?

The Witness: I have four photographs.

The Member: And they are all marked on the back, identified as to what they are?

The Witness: Yes, sir.

The Member: Has counsel for the Petitioner seen them?

Mr. Murray: No. Mr. Griggs took them all.

The Member: I suggest the possibility that they be introduced in evidence by stipulation.

(Testimony of C. C. Griggs.)

Mr. Helvern: Right.

Mr. Murray: I will have to ask him a couple of questions about them.

Mr. Helvern: No objection.

The Member: You offer them in evidence, do you Mr. Murray? [307]

Mr. Murray: Yes, sir.

The Clerk: One exhibit or four?

Mr. Murray: Four. I would like to show on the record, however, that two of them, as marked, are of Zephyr Cove from different views, and two of them, as marked, are of Marla Bay, which is south of Zephyr Cove.

The Member: They are identified on the back?

Mr. Murray: They are identified on the back.

The Member: I mean, you can look at the back and tell the place where the photograph was taken and the date, I take it?

Mr. Murray: I think that is right.

Q. (By Mr. Murray) Isn't it, Mr. Griggs?

A. They are identified.

The Member: All right.

The Clerk: Respondent's Exhibits R, S, T, and U.

(The four photographs so offered and received in evidence, were marked Respondent's Exhibits R, S, T, and U, and were made a part of this record.)

Q. (By Mr. Murray) Mr. Griggs, while you were at Lake Tahoe did you have any occasion to

(Testimony of C. C. Griggs.)

examine a section known as Section 25, Township 13, Range 18? A. I did.

Q. Did you locate that section?

A. I did. [308]

Q. And did you examine it in any detail?

A. I was on the property, made an examination of it.

Q. And what did you observe on that section?

A. I observed that that was one section that was not cut over, had never been cut over and was standing in virgin timber with trees very large.

Mr. McLeod: Pardon me. What section are you talking about?

Mr. Murray: Section 25, Township 13, Range 18.

Q. (By Mr. Murray) I show you a map which is in evidence as Respondent's Exhibit K and ask you if you can identify here Section 25, Township 13, Range 18?

A. It is this square cross hatched in black south of the rest of the property that has been identified on the map as being the lands owned by the Carson and Tahoe Lumber and Fluming Company on March 1, 1913.

Q. All right. Now, would you state as to what the number of the trees of the virgin timber for a certain space and all would be?

A. I am no expert on timber but I did count—I estimated an acre in area in two different places and I counted from 17 to 19 trees of 24 inches in diameter or more. Some trees I measured were over four feet in diameter.

(Testimony of C. C. Griggs.)

Mr. Murray: That is all, if your Honor please.

The Member: Any questions? [309]

Cross Examination

Q. (By Mr. Helvern) Mr. Griggs, you stated that this was virgin timber and some of it was four feet in diameter.

A. Yes, sir.

Q. And you made this investigation at this time quite recently?

A. I did.

Q. Would that property, in your opinion, be of approximately the same virgin timber and the same value in 1913 that it is now?

A. I stated in my previous remark that I am no expert on timber, although I am testifying. All I am testifying is what I saw and I say it was virgin timber because there were no stumps and there was no evidence of timber ever having been cut from that property.

Q. And you identified trees on that land as being four feet in diameter?

A. I measured several with my tape measure.

Q. Yes. Then, I assume from your education as an engineer and your familiarity with trees that you know how long it takes a tree to grow four feet in diameter?

A. Well, I certainly know that.

Q. Yes.

A. But I am not——

Q. (Interposing) I don't think you need to explain.

A. But I am not stating what my opinion is.

(Testimony of C. C. Griggs.)

Q. From your knowledge of this property do you think it would be easy or difficult to log this land, the trees off the property.

A. Well, I would say it would be very easy to log them off of that property. As a matter of fact, an improved highway cuts across that section at the present time. I was over that highway to Minden and it was—as a matter of fact, that is adjacent to some of those very large streams.

Q. Isn't that on the side of a hill on a mountain?

A. Well, not precipitous. Logging operations are not—well, I say I am no expert on timber, but there will be timber men to follow and I think they will say that the logging operations are not difficult on the side of the mountain.

Q. How far from the shore line of Lake Tahoe?

A. Well, I would say—it is shown on the map. The map will speak for itself.

Q. From your observation and familiarity with this map tell us from the map the distance?

A. The edge, the west edge of Section 25 is a little less than two miles from the shore.

Q. Yes, and the land slopes down toward the shore, is that not so, all of that land in there slopes toward Lake Tahoe from the mountains beyond?

A. There is water on that land and it drains toward Lake Tahoe. [311]

Q. Yes. Are those pine trees or fir trees?

A. As I say, I am no expert on timber. There will be other witnesses to testify as to that.

Q. Yes. And you are not familiar with the fact

(Testimony of C. C. Griggs.)

as to the manner in which timber is brought down to the water, then, for logging operations apparently?

A. I am familiar, but that is not my business and I am not testifying with respect to anything about logging operations. I am merely testifying to the fact that I was on the land and I am telling you what I saw.

Q. You stated that the road made it very easy. You drew a conclusion that the fact that the road is there now would make it easy to log off that land?

A. At the present time I would say that that would be a great help, at least.

Q. Yes. I assume from that that you have concluded the only way to get the timber off would be to take it on the highway and haul it off?

A. I am not discussing the possibilities.

Q. Then, you don't know how they would take the timber off?

A. I am confining my remarks and testimony entirely to what I saw when I was on that property.

Mr. Murray: I have just a couple of questions.

Redirect Examination

Q. (My Mr. Murray) Do I understand you to say you saw some [312] water on the property?

A. Yes, sir.

Q. What seemed to be the source of it, do you know?

A. Well, it seemed to be—I didn't follow it up to its ultimate source but it appeared to be springs coming from the side of the mountain.

(Testimony of C. C. Griggs.)

Q. The water you saw, was it fairly considerable in amount or what?

A. Well, it would fill a box, I would estimate, 18 inches wide and possibly 10 inches deep.

Q. Did you take any pictures while you were up on Section 25?

A. I took two pictures of the trees.

Q. I show you these two pictures and ask you if those are the two pictures you took?

A. (Examining pictures) Those are the pictures I took on Section 25.

The Member: Any objection to the introduction in evidence of these two pictures of these trees?

Mr. Helvern: No.

The Member: Do you offer them in evidence?

Mr. Murray: I offer them in evidence.

The Member: Received.

(The two photographs so offered and received in evidence, were marked Respondent's Exhibits V and W, and were made a part of this record.) [313]

Mr. Murray: I have one more quick witness, but the other two between them will take certainly a half or three-quarters of an hour.

The Member: Well, we will take the quick one.

Mr. Murray: Mr. Smith, please.

WILLIAM H. SMITH

a witness on behalf of Respondent, was duly sworn and testified as follows:

The Clerk: Your name, please?

The Witness: William H. Smith.

Direct Examination

Q. (By Mr. Murray) Mr. Smith, what is your occupation?

A. My present occupation is Associate Highway Engineer, Public Roads Administration, United States Government.

Q. What are your duties as Associate Highway Engineer?

A. Well, they have varied since I started employment with the Federal Government. I have been with them since 1926. 1926 up until about '35 I was on forest highway construction and survey work, and from 1930 to 1935 I had charge of the surveying and construction of all the roads on the Nevada side of Lake Tahoe which are national forest highways.

Q. What was your education before you went to work for the Public Roads Administration?

A. Why, I am a graduate, civil engineer, University of [314] California, class of 1917. After I graduated I served in the Army for three years, First Lieutenant, Corps of Engineers. I then started work for a railroad company, Southern Pacific, worked with them for approximately six months. Then, I worked for Stone & Webster on hydroelectric power work and in 1921 I started my

(Testimony of William H. Smith.)

work as a highway engineer working for the California Highway Department in this state for approximately four years. In 1926 I started my work with the Federal Government.

Q. Now, I understood you to say that you had charge of the road improvements on the Nevada side of Lake Tahoe, from '29 to '35, is that right?

A. From 1930 to '35.

Q. 1930 to '35?

A. That is the survey and the construction work.

Q. Well, when was the first time you went to Lake Tahoe in connection with this road improvement project?

A. It was in 1930. Of course, I had been to Lake Tahoe previous to that time but it was on unofficial business.

Q. Had you ever been over on the Nevada side of Lake Tahoe before that time?

A. I was over there in 1928, yes, but unofficially.

Q. What section of road did you survey and work on on the Nevada side of Lake Tahoe?

A. Well, the entire route from State Line. That extends [315] from approximately the south state line near Lakeside or Bijou, California, extends via Zephyr Cove, Glenrook, up to Spooners, and that we term the Glenbrook National Forest Highway.

Then, there is another section. The Lake Tahoe National Forest Highway extends from Spooners via Incline to Calneva which we call the north state line, so I covered the entire Nevada side of Lake Tahoe.

(Testimony of William H. Smith.)

Q. What was the condition of the roads from Glenbrook down to the south state line past Zephyr Cove when you first went up there in 1930?

A. Well, I would call them old unimproved roads. They were corrugated and not very well maintained. The County assumed the maintenance and responsibility and they were in general, I would say, one way roads, very sharp curvature and poor sight distance. They weren't constructed on any modern highway standards.

Q. What development was there around Zephyr Cove at that time in the way of cottages or hotels or anything like that?

A. There was very little development adjacent to the old road at Zephyr Cove. There were some summer homes toward the south end of the cove that had been constructed, that I observed, but that was all. There was no development as I call development adjacent to the old road.

Q. I show you a photograph and ask you if you recognize it? [316]

A. (Examining photograph) I do. This was taken——

Q. (Interposing) What is it?

A. It is a photograph of the old existing road, a portion of the Lake Tahoe National Forest Highway. The description is on the back.

Do you want me to read the description?

Q. Well, testify from it.

The Member: Is it your purpose to introduce these in evidence?

(Testimony of William H. Smith.)

Mr. Murray: I have a picture of the road as it was and the road as it is.

The Member: They both have the descriptive matter on the back indicating what they are and the date they were taken?

Mr. Murray: That is right. They are from the files of his office.

The Member: Any objection to the introduction?

Mr. Helvern: No, not as long as the dates are shown on the back.

The Member: All right, admitted in evidence.

(The photographs so offered and received in evidence, were marked respectively Respondent's Exhibits X and Y, and were made a part of this record.)

Q. (By Mr. Murray) When you first went up on that road near and around Zephyr Cove how much time did you spend [317] on your survey?

A. You mean on the actual survey works, surveying the alignment?

Q. Yes.

A. You mean just in the vicinity of Zephyr Cove?

Q. Well, from Glenbrook down to the south state line?

Mr. McLeod: May I hear the question?

The Member: The question is when he was first there how long did he stay in that vicinity?

A. I stayed there from—well, I was actively engaged up there every summer. Of course, the win-

(Testimony of William H. Smith.)

ters the contractors would close down their work. I conducted the survey work in connection with the highway construction work, doing the survey work prior, of course, to the actual highway construction work.

The survey work from Glenbrook, I would say, to the State line covered a period of two years. We would survey a section at a time. That runs about 6 to 10 miles in length.

Q. Did you at that time observe during the summer months or during the good period the number of people who came in around there?

A. I did; we took traffic counts.

Q. You took official traffic counts?

A. Well, our department did. They were taken under my direction. [318]

Q. Well, have you got some figures with you from which you can——

A. (Interposing) I have copied some figures from our traffic counts which we turned over to the Nevada State Highway Department.

Q. Will you state what they were from something prior to 1930 to show the difference between the traffic counts, say, in 1928, if you have it, and then 1935 or '6? Do you have that?

A. Well, I can give a description of the stations as to where the counts were taken. I have copied these—these are some notes I have made from the official traffic census that is on record with the Nevada State Highway Department. It is an official publication. The first station that we took

(Testimony of William H. Smith.)

counts at was located at Spooners. It is on U. S. Highway No. 50. The first counts were have any record of there were taken in 1931. They were taken under my direction while I was up there. The traffic counts were taken, we will say, in the direction first towards Glenbrook at Spooners' station; that is at a junction with the Lake Tahoe National Forest Highway and the Glenbrook National Forest Highway, the total number of vehicles counted in 1931. Now, these counts constitute a 16-hour period, from 6:00 a. m. to 10:00 p. m. for seven continuous days during a weekly period about the middle of July of each year. [319]

The total number of vehicles counted in 1931 at Spooners in the direction towards Glenbrook was 504. In 1935, the same period of count, approximately the same time of the year, total vehicles counted was 822. In 1940 it was 1,355. That was an increase from 1931 to about three times the amount of traffic. Then, we took another count at Spooners in the direction towards Incline. That is on the Lake Tahoe National Forest Highway and leads to the north end of the lake.

In 1931 the traffic counts on that highway were 127, in 1935, 446; in 1940, 686, or an increase of approximately five times the traffic from '31 to 1940.

Now, I have other stations here, one located at Incline, if you care for that.

Mr. Murray: No, I wouldn't care for any more. That is all. [320]

Mr. Murray: If your Honor please, I would like

(Testimony of William H. Smith.)

to offer in evidence a quit-claim deed, certified copy of a quit-claim deed from the Treasurer of Douglas County to S. C. Bigelow on the 23rd of July, 1913, which describes certain property that is on the map and it was marked for identification as Respondent's Exhibit D yesterday.

The Member: No objection.

Mr. Helvern: No objection.

The Member: Accepted in evidence.

(The quit-claim deed, dated July 23, 1913, so offered and received in evidence, was marked Respondent's Exhibit D, and was made a part of this record.)

Mr. Murray: I would like to offer in evidence as [321] Respondent's Exhibit a certified copy of a deed from H. F. Dangberg Land and Livestock Company to William McFaul on August 8, 1911. It refers to the piece of property that Mrs. Allerman testified about this morning. This is a certified copy of the deed.

The Member: No objection?

Mr. Helvern: No objection.

The Member: Accepted in evidence.

(The certified copy of deed dated August 8, 1911, so offered and received in evidence, was marked Respondent's Exhibit Z, and was made a part of this record.)

Mr. Murray: I would like to ask Mr. Smith a couple of questions on direct.

(Testimony of William H. Smith.)

Direct Examination (Resumed)

Q. (By Mr. Murray) Mr. Smith, I understood you to testify that you had charge of the construction of the new road reaching from Glenbrook to the south border of the state on the Nevada side of Lake Tahoe?

A. Yes, sir.

Q. To the junction of the California and Nevada line on the south, is that right?

A. That is correct.

Q. Was the new road which you discussed this morning placed on the same roadbed as the old road that was there along in that locality? [322]

A. No, it was not. We made a new survey and a new location and in general the new highway was located east, or further away from the present road, that is, it was located further from the lake shore.

Q. Did you have charge of the making of the maps which show where the old road was and the new road is with respect to the location right near Zephyr Cove?

A. I did.

Q. I hand you a map pieced together from two maps and ask you if that looks like the map showing the old road past Zephyr Cove and the new road past Zephyr Cove as the map which you were responsible for?

A. (Examining map) It is; that is the map.

Mr. Murray: I offer this in evidence, if your Honor please.

The Member: No objection?

Mr. Helvern: No objection.

(Testimony of William H. Smith.)

The Member: Accepted in evidence.

The Clerk: Exhibit AA.

(The map so offered and received in evidence was marked Respondent's Exhibit AA, and was made a part of this record.)

Q. (By Mr. Murray) Now, Mr. Smith, have you had occasion at my request to make a computation of the area between the old road and the lake at Zephyr Cove? [323]

A. I did.

Q. And could you state approximately in acres how much land there was between the old road and the lake at Zephyr Cove?

A. Well, in Section 10—that covers the Section which I estimated, between the old existing road as it existed in 1930 and the lake shore—of course, the lake shore fluctuates depending upon the elevation and the amount of water in it—there is approximately 40 acres of land.

Q. And did you make a computation of the area in acres that there are now between the new road and the lake at Zephyr Cove in Section 10?

A. I did.

Q. And approximately how many acres of land are there now between the highway and the lake front at Zephyr Cove?

A. Between the new highway as it is located at present and being used there are approximately 68 acres between the lake shore and the new highway, that is, the right of way line adjacent to the lake shore, not the center line of the highway.

(Testimony of William H. Smith.)

Q. Did you enter into negotiations with respect to the locating and the acquisition of the right of way for the new road?

A. The Nevada State Highway Department Right of Way Agent entered into negotiations for a right of way. We did not do that. However, I was present whenever there was a conflict [324] regarding right of way matters. We had a number of conflicts with private property owners adjacent to the lake relative to the location of the new highway.

Q. Will you state what the basis of the conflict was?

A. Well, in general, the property owners wanted us to locate the new highway further away from the lake shore in order to make a larger area of land available adjacent to the lake so that they would increase their acreage and would not have trouble on account of sewage disposal, you might call it.

Q. Did those persons who contested, or who insisted at these meetings that the new road be placed further back from the lake than the old road state what their reasons were for that?

Mr. Helvern: I object to the statement as hearsay evidence, as to the reasons of these persons.

The Member: Overruled.

Q. (By Mr. Murray) Did they state what their reasons were?

A. In general they didn't state directly. Of course, we engineers inferred that the reason was that——

(Testimony of William H. Smith.)

Mr. Helvern: (Interposing) Objection.

The Member: Objection sustained.

Mr. Murray: That is out.

Q. (By Mr. Murray) What did you say, if anything, about it? [325]

A. I don't remember their exact words. It was a long time ago, but, in general, I went over the surveyed lines with the State Highway Department Right of Way Agents and their engineers and the property owners. I, in general, at various places had run sometimes as high as two or three surveyed lines running alternately so that we could finally agree upon a location for the new highway. In general, the property owners all of course, wanted the locations that were furthest away from the lake shore. That generally was true. I don't remember exactly what their statements were.

Q. Do you know whether that was true of the road location at Zephyr Cove?

A. Well, at Zephyr Cove, of course, at that time we had difficulty in getting the right of way through the land owned by the Zephyr Cove properties, Inc., and Mrs. Church at that time insisted on having the road located further away from the lake shore. We did compromise on a location where we could get our engineering standards for construction and still come to some agreement with the property owners as to the location.

Q. Were any agreements necessary in that respect relating to the Carson and Tahoe Lumber and Fluming Company lands?

(Testimony of William H. Smith.)

A. No, sir, so far as I know we had no right of way trouble with any members of the Carson and Tahoe Lumber and Fluming Company [326]

Q. But the new road at Zephyr Cove is some distance back from the lake, from the old road?

A. It is.

Mr. Murray: That is all.

Cross Examination

Q. (By Mr. Helvern) Mr. Smith, in your direct testimony I believe you stated that prior—or that in about—it isn't clear here.

When did you first inspect the roads on the Nevada side of Lake Tahoe? You stated that in your direct examination.

A. When I was first assigned to road work in that locality.

Q. Yes. At what time? You said something about the condition of the roads at the time that you went there. In what year was that?

A. That was in 1928 when I first drove over the roads on the Nevada side of Lake Tahoe.

Q. You described the condition of the roads at that time? A. Yes, sir.

Q. Are you familiar with the condition of the roads prior to that time?

A. Not on the Nevada side of Lake Tahoe.

Mr. Helvern: That is all.

Mr. Murray: That is all.

The Member: That is all.

Witness excused. [327]

Mr. Murray: Mr. Barnum, please.

MILLARD McKINLEY BARNUM

a witness on behalf of Respondent, was duly sworn and testified as follows:

The Clerk: State your full name, please.

The Witness: Millard McKinley Barnum.

The Reporter: Spell it, please.

The Witness: M-i-l-l-a-r-d M-c-K-i-n-l-e-y B-a-r-n-u-m.

Direct Examination

Q. (By Mr. Murray) Mr. Barnum, what is your position, please?

A. Senior Forester of the Forest Service.

Q. How long have you been occupied in that position.

A. Since 1919, not in the same division.

Q. But in the Forestry Department?

A. In the Forestry Department?

Q. When did you enter it? A. 1919.

Q. What was your first assignment in the Forestry Service?

A. District Ranger.

Q. At what location?

A. On the Klamath National Forest from which I moved two years afterwards to the Shasta National Forest and then in 1923 to the Tahoe National Forest.

Q. Well, in 1923, then, you were a Ranger. Was that your [328] title then

A. I was Junior Forester.

Q. On the Lake Tahoe National Forest

A. Yes. During the period from 1919 to 1923 I

(Testimony of Millard McKinley Barnum.)

went to school two winters in the University of Montana, Forestry School at Montana and passed the junior Forestry examination.

Q. That was a promotion over a Ranger, Junior Forester? A. Yes, sir.

Q. What area is covered by the Lake Tahoe National Forest?

A. It covers the area from the Nevada side of Lake Tahoe around to McKenney Creek on the north side and around to McKenney Creek on the west side, and the Eldorado Forest is on the southern side.

Q. Well, it takes in the east side of Lake Tahoe in Nevada?

A. East side, yes.

Q. And you went there in '23, and how long were you there? A. Until 1930.

Q. Did your position change any from Junior Forester while you were there at the Lake Tahoe Forest?

A. Yes, through the different grades to Assistant Supervisor, but during the entire period I handled the land acquisitions on the forest.

Q. Your specialty was land acquisitions?

A. Yes, sir.

Q. During the period 1923 to '30 did you have occasion to go [329] on the lands owned by the Carson and Tahoe Lumber and Fluming Company east of the lake and in Nevada?

A. Yes, a good many times.

(Testimony of Millard McKinley Barnum.)

Q. A good many times. Did you inspect it in any degree in the early days of your being there?

A. In a general way, yes, and examined some public domain land which was added to the national forest during that period, intermingled with the Carson property.

Q. Now, did the Lake Tahoe National Forest take in the northeast section of the lake back from the lake too? A. Yes.

Q. How far around on the north did it go, north of the lake?

A. Well, all the drainage that drains into Lake Tahoe.

Q. I see; up to the pass on all sides?

A. And further too.

Q. But at least that?

A. Some of it outside as you go north.

Q. Well, when you went there in 1923 was there any kind of road around the northeast corner of the lake from Brockway, I think it is, around into Nevada?

A. No, no; the road that I went on was from Carson City.

Q. Oh, you came up from Carson City?

A. Yes.

Q. In 1923? A. Yes, sir. [330]

Q. Do you remember the condition of that road when you came up there?

A. Yes, a very poor road.

Q. How did you come up, what transportation?

(Testimony of Millard McKinley Barnum.)

A. I had an automobile.

Q. How about the grades on the road?

A. They were very steep; part of it you had to come in low gear.

Q. Then, any time after that while you were on the Lake Tahoe National Forest was any attempt made to put a road around that northeast corner from Brockway over to——

A. (Interposing) Between 1926 and 1928 the Forest Service built a one-way road from Incline, or from the state line around to the connection with the Glenbrook road at Spooners.

Q. I see. Is that the first——

A. (Interposing) It is just a one-way road, not very good curvature.

Q. The Forestry Department put that road in?

A. Yes, as a pioneer road to start travel around the lake, so they would have a means to travel around the lake to increase use.

Q. Yes.

A. And then following that the Bureau of Public Roads, which is part of the Department of Agriculture, widened it [331] and then gradually made it a fairly good highway.

Q. When was that widening done, do you recall?

A. Following '28.

Q. Were you up there when Mr. Smith, the last witness, was in charge of building and improving the road?

A. Well, I didn't know Mr. Smith, but I knew

(Testimony of Millard McKinley Barnum.)

the Bureau of Public Roads' men in a general way and the work that they did.

Q. Yes. Well, when you left the Lake Tahoe National Forest what did you do in 1930?

A. I went to the Trinity Forest as Forest Supervisor and was there through 1933.

Q. Where is the Trinity National Forest?

A. Out west from Redding, between there and Eureka.

Q. Then, what was your next move?

A. Then, in 1934 I came to San Francisco, or the Regional Office of Western Nevada and California, in charge of the Forest Code, and I was in that activity until July 1935, and from 1935 to the present date I have been Senior Forester in charge of land acquisition and land planting for the Forest Service.

Q. I see. Since 1935 you have been in charge of land acquisition for the Forestry Service in the district that takes in California and western Nevada?

A. Yes, sir. [332]

Q. During that period have you had anything to do with the acquisition by the Forestry Department of lands for the public in that general vicinity?

A. Yes, I have.

Q. Have you a map which indicates the land, the purchase of which by the Forestry Service you had something to do with?

A. Yes. During this period of from July 1, 1936 to June 30, 1940, this Region acquired approximately 440,000 acres in California and Western

(Testimony of Millard McKinley Barnum.)

Nevada and part of this is covered on this map. One of the larger purchases was the land from the Hobart Estate in the vicinity of Hobart Mills.

Q. What does that consist of?

A. Of about 55,000 acres at an average rate of \$2.10.

Q. What was the character of that?

A. The bulk of it was \$2.00 with a small amount around Hobart Mills and Truckee at \$3.50 which brought it up to \$2.10, and it is cut-over land with a pretty good stand of second growth and a very good stand of range, both bitter brush and meadow, and this purchase from them included the right of way for the two main streams, Little Truckee and Carter Creek, and then the land where the town of Hobart Mills is situated.

Q. Yes.

A. Now, that is one acquisition. Then——

Q. (Interposing) Just a minute, please. [333]

Was this map that you are looking at made either by you or under your supervision?

A. Under my supervision, yes.

Mr. Murray: I offer this in evidence as Respondent's Exhibit.

Mr. Helvern: No objection.

The Member: Accepted in evidence.

(The map so offered and receive in evidence was marked Respondent's Exhibit BB, and was made a part of this record.)

(Testimony of Millard McKinley Barnum.)

The Witness: Now, there are several other purchases on that map besides the Hobart Mills.

Q. (By Mr. Murray) Yes, I am going to take them up in a minute,

Now, in what color on this map, which is now marked Respondent's Exhibit BB, is the Hobart land of which you were speaking a while ago shown?

A. (Examining map) We have the legend here that shows each of the acquisitions. The Hobart Mills is pink.

Q. That is pink?

A. This one (indicating).

The Member: The witness says it has legends explaining the map.

Q. (By Mr. Murray) The legend is here (indicating). Was that legend made under your supervision? [334]

A. Yes, that was part of the map.

Q. Well, now, was there any land nearer the lake than Hobart Mills property which was purchased by the Forestry Department which came under your supervision?

A. Yes. We acquired from the Carson and Tahoe Lumber and Fluming Company and Eldorado Lumber and Fluming Company over 7000 acres.

Q. When, please?

A. In nineteen—offered in '36 and consummated in '38, 1938, at the south end of Lake Tahoe.

Q. And that is indicated on this map, is it?

A. As cross hatched and indicated in the legend.

(Testimony of Millard McKinley Barnum.)

Q. In the legend. Do you remember how much the Government paid for that land in 1938?

A. \$3.00 for that particular land from this company and also the land in the vicinity of Zephyr Cove.

Q. Well, now, on this map that we are looking at, Respondent's Exhibit BB, there is some land colored in pink which is on the east side of Lake Tahoe, including Zephyr Cove, and going north and south a ways there as shown. Is that the land you mean that was offered by Carson and Tahoe Lumber Company?

A. Yes. The negotiation was carried on with Mr. Murphy of the company and the Forest Division which Mr. Weber represented, and the offer was made from Mr. Murphy to Mr. Weber of both tracts. [335]

Q. And could you state what this offer you are speaking of was with respect to this land?

A. \$3.00.

Q. For what?

A. Well, the offer was made for \$3.00 of the two tracts.

Q. \$3.00 for what? A. Per acre.

Q. For either one or both of the tracts that you are speaking of?

A. Yes, and we had a limited amount of money and, therefore, we picked the best purchase which was the land on the south end of the lake. We made a tentative examination of both and then chose the

(Testimony of Millard McKinley Barnum.)

tract on the south and then made a detailed examination of that.

Q. Did you participate in an examination of both the land that you bought and the land that was offered that you didn't buy?

A. Mr. Weber made the examination and I checked it.

Q. You checked it? A. Yes, sir.

Q. Then, is it your opinion that the land that you did buy south of the lake from Carson and Tahoe Lumber Company was of more value than the lands that were offered by Mr. Murphy?

Mr. Helvern: I object to his opinion. I think this is incompetent. The witness is not qualified as a judge [336] with respect to that.

The Member: Objection sustained.

Q. (By Mr. Murray) Well, do I understand that you did inspect both these properties?

A. Yes, sir.

Q. And you decided to buy the land south of the lake, that the Government should buy it?

A. That is right.

Q. You approved it?

A. Yes; then we purchased it at \$3.00 an acre.

Q. Now, how many other parcels of land around Lake Tahoe shown on this map, Respondent's Exhibit BB, did you examine and approve for purchase by the Forestry Service, United States Forestry Service?

A. The Bank of Nevada offered some 18,000 acres that is shown in blue on the map and ex-

(Testimony of Millard McKinley Barnum.)

plained in the legend, and they advertised that in the paper for public bids and they got no bids, and then they sold it to the Forestry Service for 66 cents an acre.

Q. And that is shown here on the map?

A. Yes, that is shown on the map.

Q. Now, did you have something to do with that purchase?

A. Yes, sir.

Q. Did you examine that property?

A. I checked it. The members of the Tahoe National Forest [337] made the examination and I reviewed it in the field and checked it and made the recommendation for the purchase.

Q. Now, how many other parcels of land shown on this map did you check and approve that were actually purchased by the Forest Service?

A. One more on the south end of the lake from William Greuner, 480 acres.

The Reporter: Spell that, please.

The Witness: G-r-e-u-n-e-r.

Q. (By Mr. Murray) When was that? Was that purchased by the Forestry Service?

A. Yes; that was in '38. It was intermingled with the Carson and Tahoe Lumber and Fluming Company's land on the south end of the lake, and that is also shown in a separate legend.

Q. How much did the Forestry Service pay for that?

A. \$3.00.

Q. \$3.00 an acre?

A. Yes, sir.

Q. Now, is that all the purchases of land shown on this map that you had supervision and control of?

(Testimony of Millard McKinley Barnum.)

A. We made examinations of other tracts, but never consummated them.

Q. Well, from your examination of this land of the Hobart Company which you stated you approved at an average of [338] \$2.10 an acre and your examination of the land south of the lake that you approved the purchase of from the Carson and Tahoe Company and from that other party you just mentioned—what is the name? A. Greuner.

Q. (Continuing) —Greuner, and your examination of the land of the Carson and Tahoe Lumber Company east of the lake near Zephyr Cove, north and south, and other parcels of land in that locality that you have examined, how do you think the Carson-Tahoe land on the east side of the lake, except for the lake front, compares with the Hobart land and the land that was bought from Carson and Tahoe south of the lake?

Mr. Helvern: I object.

The Member: What do you mean, “compares”?

Mr. Murray: Compares in value.

The Member: Compares in value? Objection sustained. This man has not been qualified as an expert on market values. He probably is an expert on values so far as the National Forestry Service is concerned but we are not interested in that. We are just interested in the market values. I don't think the witness has been qualified in that regard, Mr. Murray.

Q. (By Mr. Murray) Mr. Barnum, I show you a map which is in evidence as Respondent's Exhibit

(Testimony of Millard McKinley Barnum.)

K and ask you if you can locate on that map Section 25, Township 13 north, Range 18 [339] east?

A. (Examining map) Yes.

Q. You can locate it. How is it indicated on that map?

A. A black cross hatching with a written in "Section 25."

Q. Are you familiar with that parcel of land?

A. Yes; it is owned by the Clover Valley Lumber Company.

Q. You say it is owned by the Clover Valley Lumber Company? A. Yes, sir.

Q. How do you know that it is owned by the Clover Valley Lumber Company?

A. They made an offer of that and other lands to the Forestry Service a few years back.

Q. And did the Forestry Service, did they present any cruising figures with respect to it in their offer?

A. At the time they made the offer they put a cruising party in the field and cruised it, and a member of our office checked with him, spent a few days with him on these areas, and at a recent—this month we had our own Ranger at Carson City examine this particular section.

Q. And what did the report show the character of that Section 25, Township 13, Range 18, is?

A. Well, it showed a few trees cut but practically the entire section was virgin timber.

Q. Well, did it show how many they ran to the acre, or something? [340]

(Testimony of Millard McKinley Barnum.)

A. The private cruise showed 21,000 feet per acre.

Q. 21,000 feet an acre? A. Yes.

Q. What kind of timber?

A. It is about 35 per cent pine and the rest fir and Lodgepole Ponderosa Pine.

Mr. Murray: That is all.

Cross Examination

Q. (By Mr. Helvern) Mr. Barnum, you spoke concerning the condition of the roads in the vicinity of Lake Tahoe at the beginning of your direct testimony.

In what year did you first examine the condition of the roads?

A. In 1923 and practically every year I have been around Lake Tahoe.

Q. In every year after 1923?

A. During my time on the Tahoe Forest until '30 first, and grazing and other activities, acquisition.

Q. What was your knowledge, if any, of those roads prior to 1923?

A. That is the first time I was in that vicinity.

Q. You stated some lands were purchased by you from the Hobart Estate? A. Yes, sir.

Q. I believe you said this was to the north of Truckee? [341]

A. In the vicinity of Hobart Mills town.

Q. That is north of Truckee, is it not?

A. Yes.

Q. About how many miles from Lake Tahoe?

(Testimony of Millard McKinley Barnum.)

A. About 15.

Q. 15. Isn't Truckee 20 miles from Lake Tahoe? A. Not through Brockway.

Q. Not through Brockway? A. No.

Q. Can the lake be seen from any of that land, from Hobart Mills?

A. Some of this Hobart Mills was really much closer; some of it was within four miles of Lake Tahoe.

Q. You spoke about the Government being limited as to the amount of money it could spend in buying lands for reforestation. A. Yes, sir.

Q. And you spoke of values up to \$3.00 per acre. Were you permitted without limit to pay whatever you thought the land was worth for reforestation purposes, or were you limited as to how high you could go?

A. No, not limited. We could pay what we considered it would sell for on the open market.

Q. What was the highest price you ever paid for land for reforestation, or the Government paid under your direction [342] and request?

A. \$125 an acre.

Q. \$125 an acre. What was the highest price you ever paid in the vicinity of Lake Tahoe or Hobart Mills for land for reforestation?

A. \$3.50.

Q. \$3.50? A. Yes, sir.

Q. How long had this land been cut over that you acquired from Hobart Mills?

(Testimony of Millard McKinley Barnum.)

A. Well, I can't give the exact figure.

Q. In your opinion as an expert on Forestry in that particular line?

A. From one to forty years.

Q. Forty years? A. Yes, sir.

Q. And it had large growths of timber on it?

A. Yes; some of it was cut very selectively and had a very good stand. Of course, that isn't the only thing—the timber isn't the only thing that carries a land value.

Q. To be sure. What are the other things?

A. One of them is grazing in that locality.

Q. Grazing, yes. You spoke of certain timber in Section 25, I believe, owned by Carson and Tahoe, or at one time owned by them south of the lake which you designated. [343]

A. Owned by Clover Valley Lumber Company.

Q. Yes. A. Yes, sir.

Q. Would you say that this timber was near merchantable timber?

A. It is under the present market. It was not a few years back. At the time I was on it, it was not merchantable.

Q. You say the present market?

A. There is a very good market, as you know now, because of national defense. That is one thing that makes it a very good market right at the present time.

Q. If it were not for the national defense program would that be merchantable timber now?

(Testimony of Millard McKinley Barnum.)

A. Yes, I believe that particular section would be, yes.

Q. Would it have been in 1935, thinking of timber prices and accessibility of this timber?

A. In 1935? Yes, it would have been.

Q. Would it have been at any time prior to 1935?

A. Yes, sir. At that time there was a sawmill at Myers and this timber was loggable to Myers.

Q. Had that sawmill been there any length of time?

A. Well, it was during the time that I was on the Tahoe Forest it was at Myers.

Q. You don't know how long it had been there?

A. No, I do not. [344]

Q. Under the same conditions would that timber have been merchantable in 1913?

A. Well, they logged around it when they was logging that vicinity and left this particular section.

Q. Would you answer the question then yes, that it would have been merchantable in 1930?

A. Well, I couldn't say because that was before I—

Q. (Interposing) But they did log all around it?

A. Yes, they logged around it.

Q. How far is this section 25 from this mill that you referred to, Myers Mill, I believe, how many miles?

A. From where Myers Mill was, the town of Myers? It is about between 12 and 14 miles.

Q. 12 and 15 miles? A. Yes, sir.

(Testimony of Millard McKinley Barnum.)

Q. How far was this from the lake, this section 25, how many miles?

A. Two and a half. It was near a road, existing road. That is the thing that made it merchantable.

Q. Pardon me?

A. It is adjacent to an existing road, Kingsbury Grade road. You couldn't build a road to the section but it is already there in this particular section.

Q. If it was near a road why wouldn't the timber be logged off?

A. Apparently it was the policy of the then owner not to log [345] it, as far as we can see.

Q. Then, the reason why it was never logged off was because that was the policy of the owner not to log it off?

A. Or else they didn't have a good title. As I say, I don't know why that particular section was left. It was logged around and left.

Q. How far away from Lake Tahoe in the main were the sections of land which you bought from Carson and Tahoe; how many miles from the lake, the Sections that you actually purchased?

A. About four to five miles.

Q. Where you have your finger is about eight miles, isn't it, looking at that as a section?

A. (Examining map) No; this is six miles from here to here (indicating).

Q. Yes.

A. This is a township (indicating).

Q. The bulk of it, would you say, was five miles?

(Testimony of Millard McKinley Barnum.)

A. Yes, sir.

Q. The center? A. No; four to five miles.

Q. Well, the largest red portion is six miles away. That is at the lower edge.

The Member: I think the map will be in evidence. It will speak for itself.

Mr. Helvern: Yes, we will accept that. [346]

That will be all.

Mr. Murray: May I ask him one question?

The Member: All right, sir.

Redirect Examination

Q. (By Mr. Murray) I would like to ask you, Mr. Barnum, why you recommended the purchase by the Government in 1938 of the Carson-Tahoe land that was purchased south of the lake instead of the land that was offered by Carson and Tahoe Company to the Government on the east side of the lake?

A. One thing was topography. The land on the south side of the lake was very good ground, mostly all soil, and you could build a road most anywhere with very little cost. That that they didn't acquire is steep ground and the cost of building roads to get the timber out in the future when you get another crop will be excessive. And also grazing value too, the land on the south was much higher grazing value.

Mr. Helvern: One more question.

Recross Examination

Q. (By Mr. Helvern) When you were thinking

(Testimony of Millard McKinley Barnum.)
of the roads and the condition of the soil you considered that from the status of the Government for reforestation purposes, I presume?

A. Well, that as well as—the way we appraised it is what we considered it worth to an individual, what an individual would pay for it, because we don't buy above the market. [347]

Q. You don't purchase this land for resale, do you, for the Government?

A. We can; we do resell.

Q. You didn't purchase this; you purchased this all for resale rather than reforestation?

A. No.

The Member: The purpose of this was what?

The Witness: The purpose of buying it was reforestation.

Q. (By Mr. Helvern) That takes many years, does it not?

A. Well, immediately you get grazing under permit.

Mr. Helvern: Yes. That is all.

The Member: Is that all?

Mr. Helvern: No further questions.

Mr. Murray: That is all.

The Member: That is all, sir.

Witness excused.

The Member: Call your next.

Mr. Murray: Mr. Barrett.

LOUIS A. BARRETT

a witness on behalf of Respondent, was duly sworn and testified as follows:

The Clerk: State your full name, please.

The Witness: Louis A. Barrett. [348]

The Reporter: Spell it, please.

The Witness: L-o-u-i-s B-a-r-r-e-t-t.

Direct Examination

Q. (By Mr. Murray) Mr. Barrett, are you actively engaged in any occupation right now?

A. No, sir.

Q. What was your last activity in an occupation?

A. In the United States Forest Service.

Q. And where were you located? First, are you retired from that service now? A. I am.

Q. And where was your last location in the Forest Service?

A. In San Francisco.

Q. And what was your title?

A. Assistant Regional Forester.

Q. Did you have charge of any special duties in the Forestry Department?

A. I had charge of all land use, acquisition, exchange and recreation in California and Western Nevada.

Q. What was your occupation in 1912 and '13, Mr. Barrett?

A. The same as when I retired.

Q. You had the same title in 1912 and '13 that you had when you retired?

(Testimony of Louis A. Barrett.)

A. The same title from 1910 to 1936.

Q. And were the duties the same? [349]

A. The same; a few more added every year.

Q. Mr. Barrett, what was your occupation prior to 1910, say, from 1902 to 1910?

A. In 1902 I served as a member of a survey party in the general Land Office, engaged in public land surveys all the way from the Rio Grande in Texas to the boundaries of Yellowstone Park.

Q. And what service was that in?

A. General Land Office Department of the Interior.

Q. You were surveying what type and kinds of lands?

A. Public lands, national park boundaries and military reservations.

Q. And how long were you occupied in that way?

A. One year.

Q. What did your classification consist of?

A. That was more of a survey job although we did make an appraisal of some abandoned military reservations in the southwest with a view to their disposal for the United States.

Q. Well, in 1910 you went into the Forestry Service then, you stated? A. In 1903.

Q. Oh, in 1903 you went into the Forestry Service? A. Yes, sir.

Q. Well, what did you do between 1903 and 1910? [350]

A. 1903 and '4 my work was on boundary inspection all over the west from Arizona, New Mex-

(Testimony of Louis A. Barrett.)

ico, to Montana and Idaho, traveling mainly by saddle horse.

Q. That was 1903 and '4? A. Yes, sir.

Q. And then in 1910 what was your occupation?

A. I was supervisor of three of the large newly created national forests in California taking in from Clover Valley north to Pit River.

Q. Did your services involve the classification of lands at any time?

A. From the start of my work in 1903 to my retirement I had to do with classification work.

Q. Did you ever have to do any appraisal work for the Forestry Service?

A. Yes, I handled personally or checked the land appraisals made in California during the entire period of my service from 1910 to 1936.

Q. Were you ever engaged in appraisal work with respect to lands for any other agencies then the Land Office and the Forestry Service of the United States?

A. Several years prior to my retirement I was called upon as a consulting expert by the Resettlement Administration of the Department of Agriculture, by the Indian Office of the Department of the Interior and by the State Park Commission [351] of California.

Q. You were engaged by the State for some appraisal work, you say, the State of California?

A. I served without compensation in any of these as cooperation on the part of one Government Agency with another.

(Testimony of Louis A. Barrett.)

Q. Well, what class of land and to what extent in acreage was the work that you assisted in for the State of California?

A. Mainly on three parks, one down on Palomar Mountain, one in the San Jacinto Mountains, the third one 40 miles down below Monterey.

Q. Did that involve the actual appraisal of the value of properties? A. It did.

Q. Did your appraisal and classification work that you are speaking of for the Forestry Service include the territory around Lake Tahoe?

A. It did.

Q. When did you first go to Lake Tahoe? When did you make your first trip to Lake Tahoe?

A. In 1911.

Q. Which way did you go?

A. Came in from Nevada City by Truckee on a saddle horse.

Q. What was the condition of the road from Truckee to Lake Tahoe at that time?

A. It was just a fair dirt road. [352]

Q. What was the first point on the lake that you came to?

A. Tahoe Tavern, Tahoe City.

Q. What was the situation at that time with respect to development or anything of that sort?

A. There was quite a material development around the outskirts of the lake as well as the south end down around Tallac and some intermediate large estates between the two, and there was also some at Emerald Bay.

(Testimony of Louis A. Barrett.)

Q. What side of the lake is that on, all those that you are speaking of?

A. They are all on the west or south side of the lake.

Q. In what state? A. In California.

Q. In 1911 did you travel from Tahoe City down to Emerald Bay and to the south side of the lake?

A. I did not.

Q. When was the first time you traveled down that way?

A. In July 1912. The Forest Service had a—their roads didn't extend all around the lake and the Forest Service had a launch that was used for patrol purposes around the lake. That was the only way, by water, of getting entirely around the lake in 1912.

Q. Do I understand that there was not any road from Tahoe City down to Tallac on the California side?

A. There was no road from Meeks Bay to near Tallac. [353]

Q. How long a distance is that, about?

A. Oh, roughly eight, ten miles, eight miles or such a matter.

Q. Do you know when the first road was put through in that stretch?

A. I don't remember exactly but I think about 1920.

Q. Did the Forestry Service have something to do with that? A. No.

(Testimony of Louis A. Barrett.)

Q. When in the early days there around 1912 or '13 did you make any trip to the Nevada side of Lake Tahoe?

A. Not by vehicle or horse in 1912 but I went entirely around the lake close to the shore on the Forest Service launch.

Q. And at that time were you conscious of a place that is now known at Zephyr Cove?

A. I knew—from a study of the map and the country being pointed out to me by the Ranger who was the launch operator, he pointed out all these points and I knew from then on where they were.

Q. What did that look like in 1912 or '13 from the standpoint of any development?

A. The only development that I remember seeing on the east side of the lake near the state line to near where Cal-Neva is now was buildings at two places.

Q. And where were they?

A. At the Marley ranch and around Glenbrook.

[354]

Q. You didn't get off the boat that time?

A. No, we skirted close to the shore all the way around.

Q. Well, did you sometime later make a trip over to the Nevada side by road some way?

A. I did.

Q. When was that?

A. The first time was in 1915.

Q. And how did you get there that time?

A. Went in from Placerville and around by

(Testimony of Louis A. Barrett.)

Cave Rock and over the summit and down to Carson City.

Q. How did you go through that time? How did you get over there?

A. Saddle horse.

Q. What was the condition of the road in the Nevada area, that is, from State Line on the south up to Glenbrook at that time?

A. It was poor.

Q. Was that in 1914? A. It was 1915.

Q. 1915. Well, what development, if any, did you see over there as you came along the road?

A. I saw very little along the road between State Line and until you got in sight of Carson Valley.

Q. When was the next time that you went into that locality? A. 1916. [355]

Q. And how did you go in there then?

A. Went in with a Model T Ford. We went over the Kingsbury Grade, down to Minden and on down to Mono Lake.

Q. Well, how did you approach the lake that time, from where?

A. From the Placerville Road and Myers Station on the south.

Q. Well, how did the road look then that you went over?

A. It was not much better, any better than it was a year before.

Q. Did you have any difficulty getting up there with your model T?

(Testimony of Louis A. Barrett.)

A. We had to pour water in it plenty coming back, I know, coming up Kingsbury Grade because it has pitches of 25 per cent.

Q. Pitches of 25 per cent. What kind of a road was that?

A. It was just a dirt road, no surfacing.

Q. Did you pass any cars on the road?

A. Yes, occasionally we saw a car.

Q. What was your purpose in going in there that time, into that east side of Lake Tahoe?

A. The purpose at that time, that was the first start the Forest Service made looking toward any development of recreation as a definite major use in the National Forests of California.

Q. And you had charge of any recreational development in [356] that area?

A. I did.

Q. Well, what did you do over there, then? What did you do on that trip?

A. Just went through the country sizing it up, looking it over with a view to seeing what—making a plan for prospective development of public camp grounds, resort sites and summer home sites.

Q. Well, was that with a view to the possible purchase by the Forestry Department of some of that land?

A. Well, we knew that in the Lake Tahoe region, at least, we would have to purchase because most of the land around the lake was privately owned.

Q. And did you have in mind seeking land to

(Testimony of Louis A. Barrett.)

purchase for the Forestry Department for recreational purposes at that time?

A. We did on the west side of the lake but not on the east side.

Q. Well, did you actually inquire about prices of the lake land on the California side at about that time?

A. I inquired as to prices beginning with my first visit until my last just to get a general idea as to what land prices were in that Lake Tahoe basin.

Q. Well, what, in general was the result of your investigation as to prices over on the California side reaching out from Tahoe City in 1916? [357]

A. I don't remember any exact figures that I set down at that time, but the prices of the good land along the lake shore were pretty high in some cases.

Q. Now, from your trips on both sides of the lake—up to that time you had had, according to your own account, at least three trips over to the Nevada side—at all times when you came over to the Nevada side had you been on the California side too about the same time? A. Yes, sir.

Q. What was your general impression of the recreational features of the California side of Lake Tahoe as distinguished from the Nevada side?

A. At that time I never gave any consideration to the position of recreation lands on the east side of the lake.

The Member: Why not, Mr. Barrett?

The Witness: Because of the poor accessibility.

(Testimony of Louis A. Barrett.)

The climatic conditions are less favorable on the east side because the prevailing winds are from the west, and there is less precipitation on the east side of the lake, and most of the lands on the east side had been logged over while the high priced lands on the west side of the lake were mainly virgin timber stands. Topography was the other factor, because on the west side of the lake, the northwest and south side flat, or relatively flat land extends back from the lake shore in all but a few cases, or from a quarter [358] of a mile to two, at the south end six or eight miles, while on the east side of the lake there is very little flat land except at two or three places.

The Member: May I interrupt again?

Just a moment ago you said as you recall it, the prices charged for shore property on the California side were pretty high and you used some general term like that. Could you make it a little bit more specific? What do you mean by "high" at that time, if you can answer that, Mr. Witness?

The Witness: Well, in such checks as I made, inquiries as I made it was evident that land—that sales made on the west side of the lake, the waterfront property was selling at some five to ten or more times as much as there was any possibility of selling it on the east side of the lake. Some of the land even in 1916 was relatively high priced.

The Member: That is what I don't understand; I mean, I don't know what you mean by "high priced." Could you give me an idea?

(Testimony of Louis A. Barrett.)

The Witness: Well, even as early as that, as my memory goes, there was some of the best of the land there that was on the west side, mainly around Tallac and near the outlet that was being—it couldn't have been acquired, I don't think, for less than five hundred to a thousand dollars an acre.

Q. (By Mr. Murray) You say that was near Tallac?

A. Around Tallac, near Tallac and around Tahoe City. [359]

Q. Tahoe City? A. And Tahoe Tavern.

Q. When did you make your next trip over to the Nevada side, east side of the lake, after 1916?

A. I made all together between 1911 and 1935 twenty separate trips, twenty trips to Lake Tahoe and, oh, probably twelve of them I visited the east side of the lake.

Q. Did you ever make a trip to the east side of the lake to actually inspect and appraise any land?

A. In August 1925 I took the Assistant Forester from Washington—he was the man that passed on land acquisition matters in Washington—I took him over the Glenbrook-Carson City road.

Q. Was that in 1905, you said?

A. 1925. I took him up on the summit and we spent a few hours hiking out along the summit and taking a few pictures there, looking over the cut-over lands with a view to determining what we would consider would be a fair price to pay for

(Testimony of Louis A. Barrett.)

them in case they could be—in case they were definitely offered to the United States.

Q. Did I understand you to say those were lands up on the Nevada side, back of Glenbrook?

A. Back of Glenbrook and from Glenbrook south towards Kingsbury Grade.

Q. That would be in back of Zephyr Cove too, then? [360] A. Back of Zephyr Cove.

Q. Did you make any report as to your opinion of the value of that land in 1925?

A. Only in memorandum form and talking it over with Mr. Sherman at the time.

Q. What did you decide at that time?

A. We decided if the land could be acquired at around \$1.25 an acre it would be a desirable acquisition from the standpoint of the United States.

Q. That was in 1925?

A. That was in August, 1925.

Q. Well, now, how near to the lake front along that same stretch would you expect to classify land that you would only recommend to the Government at \$1.50 an acre?

A. From a quarter to a half a mile as determined by topography.

Q. Well, where would the quarter mile be? Where would the half mile be?

A. Well, the half mile, or even more, probably, in the case of the little valley back of Glenbrook, but some of the steep—some of the portions like along Cave Rock and sites of that kind it wouldn't be over a quarter of a mile back.

(Testimony of Louis A. Barrett.)

Q. Then, do I understand it correctly that you were classifying in this general classification all lands back of a quarter of a mile at some points on the lake and a half a [361] mile at others?

A. Well, approximately that. We would classify at that price lands to which we could ascribe no recreational value.

Q. That is the way you would divide it?

A. Yes, because in our land appraisal work we consider virgin timber, timber producing possibilities, present grazing value and present or prospective recreation values.

Q. Did you have much to do with inspection and classification of lands on which there was virgin timber still? A. Yes, sir.

Q. Did you ever have to make any reports to the Forestry Department on lands on which there was virgin timber?

A. I made reports, or checked and approved reports of lands of all characters that are found in the mountains of California from the best virgin timber lands to the poorest watershed lands.

Q. Did you at that time in your reports state what you thought the value of these lands were?

A. Which ones?

Q. Well, with timber and those without and so on.

A. We did.

Q. I understood you to say that in 19—what year did you go over Kingsbury Grade with the old model T?

A. The first time, as I remember, was in '16.

(Testimony of Louis A. Barrett.)

Q. 1916? [362] A. Yes, sir.

Q. Well, I show you a map which is in evidence as Respondent's Exhibit K and ask you if you can locate the Kingsbury Grade on this map?

A. (Examining map) It follows in general through the south end, crosses in general the south end of their land.

Q. Of whose land? A. The Carson land.

Q. Well——

A. (Interposing) It is not shown on this map, but that is as I remember it.

Q. Well, can you locate Section 25, Township 13, Range 18?

A. (Examining map) Right here (indicating).

Q. How is it indicated on this map?

A. In black and white cross hatch with "Section 25" in the center.

Q. Yes. Now, if you will notice Kingsbury Grade goes across the corner of that land?

A. Yes, follows up that draw.

Q. Do you remember when you went over that grade that time what the nature of that land was there?

A. I only remember that we passed through some uncut timber lands.

Q. On the Kingsbury grade?

A. On the Kingsbury grade. [363]

The Member: Is that Kingsbury Grade approximately where U. S. 50 now goes?

The Witness: I haven't been over the newest road, your Honor.

(Testimony of Louis A. Barrett.)

Mr. Murray: I can tell you my understanding is that 50 goes over——

The Witness: (Interposing) From Glenbrook.

Mr. Murray: (Continuing) ——from Glenbrook to Carson City further north. The Kingsbury Grade is still unimproved.

The Member: I see.

Mr. Murray: I mean, it is pretty good dirt road. It comes in at the south end of the road from Minden.

The Witness: The Kingsbury grade was one of the oldest roads. The first telegraph line across the United States follows up Kingsbury Grade.

Q. (By Mr. Murray) Have you purchased or had the last word on the purchase of any land for the Forestry Service in this part of the country?

A. In the Tahoe country?

Q. Well, generally speaking first?

A. In the Lake Tahoe country, yes.

Q. Do you know approximately how many acres of land you have had the final word on in this section for the Forestry Service as to purchase?

A. Within 50 miles of the lake I should say not less than 50,000 [364] acres.

Q. 50,000 acres?

A. Yes, none of it right on the lake shore except one little piece.

Q. None of it on the lake shore except one little piece? A. One very moderate piece.

Q. Well, what classifications of lands were in this 50,000 acres that you recommended to purchase?

(Testimony of Louis A. Barrett.)

A. It ran all the way from highly valuable recreation land to land that had no value except for a limited amount of grazing.

Q. When did you first start, I mean, when did you start on the purchase of lands for the Government, the actual purchase of lands?

A. Under the General Land Exchange Act of March 20, 1922, we started immediately thereafter.

Q. Then, this 50,000 acres was purchased from 1922?

A. Up until my retirement in '36.

Q. Yes. Well, now, in and around 1913 did you have any occasion to appraise mountain lands, lands around Lake Tahoe, and to classify them in your appraisal?

A. Well, I had charge of classification but not much appraisal from the acquisition standpoint.

Q. When did the appraisal from the acquisition standpoint start in your experience? [365]

A. Well, the first case we handled was 1917 under a special Act of Congress, down on the Sierra National Forest, but in general on a broad scale it didn't start until 1922.

Q. Well, what kind of land was purchased in 1917?

A. We opened negotiations for an exchange. We were five years acquiring the land because the owner wouldn't sell for what we believed was a fair price.

Q. Did you make, or was there made under your supervision any check of the numbers of people that came into Lake Tahoe during any of the years from 1913 to 1930?

(Testimony of Louis A. Barrett.)

A. Not directly into Lake Tahoe. We didn't scale it down to that fine a point, but commencing in the year 1916 we made an estimate, figures derived from all possible sources of the travel to each national forest in Californai and their mode of conveyance.

Q. Was some such a check as that made of the region involving Lake Tahoe under your direction?

A. The Tahoe National Forest as a whole, yes.

Q. And can you state what some of those comparative figures are from, say—what is the earliest date that you made them?

A. Well, we started in 1916.

Q. Well, could you tell us how those figures read for, say, 1916 and then '20 and '25 and '30, just a few years apart, you know? [366]

A. If I may refer to these figures here which I took off the official records the other day of the Forest Service.

The Member: Yes.

The Witness: The first record we had was 1916 and the estimate of travel to the Tahoe National Forest, the whole area, was 42,000 people. That was by all means of transportation.

Q. (By Mr. Murray) Now, can you break that down into one or two or three classifications? What was the mode of travel?

A. 1916 about 50-50; it was about half by automobile and the other half by train or by team.

Q. Now, can you tell us about 1920, what the number of travelers were?

(Testimony of Louis A. Barrett.)

A. The estimated number of travelers in 1920 had jumped to 90,000, with 72,000 of them by automobile. In 1921 the estimate was 100,000 with 79,000 by automobile, 1928 was 447,000 with 426,000 of them by automobile, and the last figure that I have was for 1938, that I took down, that I jumped to, and this is due to the tremendous cross-country travel, 4,373,000, of whom over four million traveled by automobile. That is an increase of——

The Member: (Interposing) A considerable extent.

Mr. Murray: Yes.

The Witness: (Continuing) ——from 42,000 to 4,473,000 in 22 years. This is from the official records, annual statistical reports and records of the Forest Service. [367]

Mr. Murray: I think that is all, your Honor.

The Member: Any cross examination?

Mr. Helvern: No questions.

The Member: That is all, sir. Thank you very much. [368]

[Endorsed]: U. S. B. T. A. Filed July 8, 1941.

[369]

In the United States Circuit Court of Appeals for
the Ninth Circuit

B. T. A. No. 103735.

CARSON AND TAHOE LUMBER AND FLUM-
ING COMPANY,

Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review

ORDER RE TRANSMITTAL OF EXHIBITS

Upon consideration of the petitioner's motion and the causes shown in support thereof, and it appearing to the Court that the respondent has no objection to the entering of the order therein moved,

It is by the Court this 15th day of February, 1943,

Ordered: That the originals of the following exhibits, which exhibits are to be specified in the designation of contents of record, need not be printed in the record on review and that the Clerk of the Tax Court of the United States is directed to transmit the originals of the exhibits to the Clerk of this Court to be produced at the argument of this cause for the benefit of the Court and counsel: Petitioner's Exhibits 1, 2, 3, 8, 9, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23; Respondent's Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA and BB.

It Is Further Ordered: That said exhibits remain

in the custody of the Clerk of the Tax Court of the United States until fifteen days before this cause on review is set for argument in this Court and then, upon direction and cost of counsel for petitioner on review, that said exhibits be transmitted to the Clerk of this Court, and [399]

It Is Further Ordered: That the Clerk of this Court transmit a certified copy of this order to the Clerk of the Tax Court of the United States, to be by him incorporated in the record on review as transmitted to this Court.

By the Court.

FRANCIS A. GARRECHT,
Circuit Judge.

[Endorsed]: Filed Feb. 15, 1943. Paul P. O'Brien, Clerk.

A True Copy:

Attest: Feb. 15, 1943.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk.

[Endorsed]: T. C. U. C. Filed Feb. 20, 1943.
[400]

[Title of Tax Court and Cause.]

PRAECIPE

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of

Appeals for the Ninth Circuit copies, duly certified as correct, of the following documents and records in the above entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Ninth Circuit heretofore filed by the above named petitioner.

1. Docket entries of all proceedings before the Tax Court of the United States (formerly United States Board of Tax Appeals) in Docket No. 103735.

2. Pleadings before the Tax Court of the United States in Docket No. 103735, including:

(a) Petition with copy of notice of deficiency attached.

(b) Answer filed by respondent.

(c) Amended answer filed by respondent.

(d) Reply filed by petitioner. [401]

3. Memorandum Findings of Fact and Opinion of the Tax Court of the United States entered June 23, 1942.

4. Decision of the Tax Court of the United States entered September 1, 1942.

5. Petition for review and notice of filing thereof.

6. Order of the United States Circuit Court of Appeals for the Ninth Circuit dated December 31, 1942, extending the time for the completion and transmission of the record on review to and including March 7, 1943.

7. Typewritten copy of the Reporter's Official Report of Proceedings before the Tax Court of the United States, reporting the testimony taken at the hearings in San Francisco, California on June 25 and June 26, 1941 (2 volumes, 318 pages).

8. Petitioner's Exhibits 4, 5, 6, 7, 10, 11 and 15.

9. Order of the United States Circuit Court of Appeals for the Ninth Circuit, dated February 15, 1943, ordering and directing that the following exhibits need not be printed in the record on review and that they be transmitted to the Clerk of the Court upon direction and cost of counsel for petitioner on review fifteen days before the cause on review is set for argument: Petitioner's Exhibits 1, 2, 3, 8, 9, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23; Respondent's Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA and BB.

10. The following exhibits to be transmitted to the United States Circuit Court of Appeals pursuant to the Court's order [402] described in the foregoing paragraph: Petitioner's Exhibits 1, 2, 3, 8, 9, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23; Respondent's Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA and BB.

11. This praecipe.

Respectfully submitted,

LLEWELLYN A. LUCE,

937 Munsey Building,

Washington, D. C.

GEORGE H. KOSTER,

300 Montgomery Street,

San Francisco, California.

Counsel for Petitioner on
Review.

Service of copy of within praecipe is hereby acknowledged this 24th day of February, 1943. No counter praecipe will be filed.

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Respondent on
Review.

[Endorsed] T. C. U. S. Filed Feb. 24, 1943.

[403]

[Title of Tax Court and Cause.]

CERTIFICATE OF CLERK

I, B. D. Gamble, clerk of The Tax Court of the United States, do hereby certify that the foregoing pages, 1 to 403, inclusive, contain and are a true copy of the transcript of record papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 27th day of February, 1943.

[Seal] B. D. GAMBLE,
Clerk.

[Endorsed]: No. 10380. United States Circuit Court of Appeals for the Ninth Circuit. Carson and Tahoe Lumber and Fluming Co., a corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of the Tax Court of the United States.

Filed March 3, 1943.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10380

CARSON AND TAHOE LUMBER AND FLUM-
ING COMPANY,

Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

STATEMENT OF POINTS TO BE RELIED
UPON ON APPEAL AND DESIGNATION
OF PORTION OF RECORD TO BE
PRINTED

Comes now the petitioner above named by its attorneys of record and complying with the rules of

this Court states that it intends to rely on appeal on all and each of the errors assigned in the Petition for Review herein, which Petition for Review is included in the transcript herein, and petitioner hereby formally adopts the errors assigned in said Petitioner for Review as its Statement of Points to be Relied Upon on Appeal.

Petitioner further states that it relies upon the entire record certified by the Clerk of the Tax Court of the United States except the portions thereof designated below. Petitioner requests that there be printed as the record on appeal herein all of the record certified to this Court except the following portions thereof:

Page 48—Cover page of Transcript of Testimony.

Pages 50 & 51—Index of Transcript of Testimony.

Page 52, line 10 to page 56, line 17 inclusive—Opening statements of counsel.

Page 135, line 1 to page 136 line 8 inclusive—Discussion of counsel.

Page 139 line 16 to page 141 line 9 inclusive—Discussion of counsel.

Page 191 line 3 to page 192 line 1 inclusive—Discussion of counsel.

Pages 235, 236, 237 and line 1 to 7 inclusive on page 238—Title and Index of Transcript of Testimony.

Page 274 line 15 to page 275 line 7 inclusive—Discussion of counsel.

Page 320 line 17 to page 321 line 11 inclusive—Discussion of counsel.

Page 368 line 5 to line 26 inclusive and page 369—Discussion of counsel.

Page 370—Petitioner's Exhibit 4.

Page 372 and line 20 to 36 inclusive on page 373—Petitioner's Exhibit 5, line 20 to 36, page 2 and 3.

Respectfully submitted,

GEORGE H. KOSTER

BAYLEY KOHLMEIER

300 Montgomery Street

San Francisco, California

LLEWELLYN A. LUCE

937 Munsey Building

Washington, D. C.

Counsel for Petitioner

[Endorsed]: Filed May 14, 1943. Paul P. O'Brien, Clerk.